COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

APPLICABILITÉ DE L'OBLIGATION D'ARBITRAGE EN VERTU DE LA SECTION 21 DE L'ACCORD DU 26 JUIN 1947 RELATIF AU SIÈGE DE L'ORGANISATION DES NATIONS UNIES

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

APPLICABILITY OF THE OBLIGATION TO ARBITRATE UNDER SECTION 21 OF THE UNITED NATIONS HEADQUARTERS AGREEMENT OF 26 JUNE 1947

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READEX FICHE

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L'affaire de l'*Applicabilité de l'obligation d'arbitrage en vertu de la section 21 de l'accord du 26 juin 1947 relatif au siège de l'Organisation des Nations Unies*, inscrite au rôle général de la Cour sous le numéro 77, a fait l'objet d'un avis consultatif rendu le 26 avril 1988 (*Applicabilité de l'obligation d'arbitrage en vertu de la section 21 de l'accord du 26 juin 1947 relatif au siège de l'Organisation des Nations Unies, C.I.J. Recueil 1988*, p. 12).

Le présent volume reproduit la requête pour avis consultatif, les documents, les exposés écrits et oraux et la correspondance relatifs à cette affaire.

Parmi les documents transmis à la Cour, la résolution 42/229 A et la résolution 42/229 B concernant la demande d'avis consultatif, adoptées par l'Assemblée générale à sa 104e séance plénière, le 2 mars 1988, sont reproduites en anglais et en français ; les autres documents ne sont reproduits (en une seule langue) que dans la mesure où ils sont utiles à la compréhension de l'avis consultatif et ne se trouvent pas dans le domaine public.

La Haye, 1990.

The case concerning *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947* was entered as No. 77 in the Court's General List and was the subject of an Advisory Opinion delivered on 26 April 1988 (*Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, I.C.J. Reports 1988*, p. 12).

The present volume reproduces the Request for advisory opinion, the documents, the written and oral statements and the correspondence in the case.

Of the documents transmitted to the Court, resolution 42/229 A and resolution 42/229 B concerning the request for advisory opinion, adopted by the General Assembly at its 104th plenary meeting on 2 March 1988, have been reproduced in English and French; the others have been reproduced (in one language) only if they are relevant to the understanding of the Advisory Opinion and are not in the public domain.

The Hague, 1990.

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REQUÊTE POUR AVIS CONSULTATIF

REQUEST FOR ADVISORY OPINION

THE SECRETARY-GENERAL OF THE UNITED NATIONS TO THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

2 March 1988.

Sir,

I have the honour to inform you that the General Assembly of the United Nations, at its 104th plenary meeting held on 2 March 1988, adopted resolution 42/229B on the Report of the Committee on Relations with the Host Country under agenda item 136 of its forty-second session.

In the above-mentioned resolution the General Assembly decided, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, in pursuance of Article 65 of the Statute of the Court, for an advisory opinion on the following question, taking into account the time constraint:

> "In the light of facts reflected in the reports of the Secretary-General [A/42/915 and Add.1], is the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations [resolution 169 (II)], under an obligation to enter into arbitration in accordance with section 21 of the Agreement?"

I have the honour further to enclose herewith one copy of the English and French texts of General Assembly resolution 42/229B, both duly certified. In accordance with Article 65 of the Statute of the International Court of Justice, I shall transmit to the Court as soon as possible all relevant documents likely to throw light upon the question.

Accept, etc.

(*Signed*) Javier PÉREZ DE CUÉLLAR.

RESOLUTIONS 42/229 A AND 42/229 B ADOPTED BY THE GENERAL ASSEMBLY AT ITS 104TH PLENARY MEETING ON 2 MARCH 1988

A

The General Assembly,

Having considered the reports of the Secretary-General of 10 and 25 February 1988[1],

Recalling its resolution 42/210 B of 17 December 1987,

Reaffirming the applicability to the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations in New York of the provisions of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, dated 26 June 1947[2],

Having been apprised of the provisions of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, which was signed on 22 December 1987, Title X of which establishes certain prohibitions regarding the Palestine Liberation Organization, *inter alia*, a prohibition "to establish or maintain an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof",

Bearing in mind that that provision takes effect on 21 March 1988,

Taking note of the position of the Secretary-General in which he concluded that a dispute existed between the United Nations and the United States of America concerning the interpretation or application of the Headquarters Agreement,

Noting that the Secretary-General invoked the dispute settlement procedure set out in section 21 of the Agreement and proposed that the negotiations phase of the procedure commence on 20 January 1988,

Noting also from the report of the Secretary-General of 10 February 1988[3] that the United States was not in a position and was not willing to enter formally into the dispute settlement procedure under section 21 of the Headquarters Agreement, that the United States was still evaluating the situation, and that the Secretary-General had sought assurances that the present arrangements for the Permanent Observer Mission of the Palestine Liberation Organization would not be curtailed or otherwise affected,

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[1] A/42/915 and Add.1.
[2] See resolution 169 (II).
[3] A/42/915.

RÉSOLUTIONS 42/229 A ET 42/229 B ADOPTÉES PAR L'ASSEMBLÉE GÉNÉRALE À SA 104E SÉANCE PLÉNIÈRE LE 2 MARS 1988

A

L'Assemblée générale,

Ayant examiné les rapports du Secrétaire général, en date des 10 et 25 février 1988 [1],

Rappelant sa résolution 42/210 B du 17 décembre 1987,

Réaffirmant que les dispositions de l'accord entre l'Organisation des Nations Unies et les Etats-Unis d'Amérique relatif au siège de l'Organisation des Nations Unies, en date du 26 juin 1947 [2], s'appliquent à la mission permanente d'observation de l'Organisation de libération de la Palestine auprès de l'Organisation des Nations Unies à New York,

Ayant été informée des dispositions du *Foreign Relations Authorization Act* pour les exercices 1988 et 1989, qui a été signé le 22 décembre 1987 et dont le titre X énonce certaines interdictions concernant l'Organisation de libération de la Palestine et, notamment, l'interdiction «d'établir ou de maintenir sur le territoire relevant de la juridiction des Etats-Unis un bureau, un siège, des locaux ou autres établissements installés sur ordre ou sur instructions de l'Organisation de libération de la Palestine ou de tout groupe affilié à celle-ci, ou de tout successeur ou agent de l'un ou de l'autre, ou à l'aide de fonds fournis par l'Organisation de libération de la Palestine ou par tout groupe affilié à celle-ci, ou par tout successeur ou agent de l'un ou de l'autre»,

Considérant que cette loi entre en vigueur le 21 mars 1988,

Prenant note de la position du Secrétaire général qui conclut qu'un différend existe entre l'Organisation des Nations Unies et les Etats-Unis d'Amérique quant à l'interprétation et l'application de l'accord de siège,

Notant que le Secrétaire général a invoqué la procédure de règlement des différends visée à la section 21 de l'accord et a proposé que la phase de négociations prévue dans le cadre de cette procédure débute le 20 janvier 1988,

Notant également qu'il ressort du rapport du Secrétaire général, en date du 10 février 1988 [3], que les Etats-Unis ne pouvaient ni ne souhaitaient devenir officiellement partie à la procédure de règlement des différends prévue à la section 21 de l'accord de siège, que les Etats-Unis étaient encore en train d'examiner la situation et que le Secrétaire général avait demandé que l'administration fédérale lui donne l'assurance que les arrangements actuellement en vigueur en ce qui concerne la mission permanente d'observation de l'Organisation de libération de la Palestine ne seraient ni restreints ni modifiés d'aucune manière,

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[1] A/42/915 et Add.1.
[2] Voir résolution 169 (II).
[3] A/42/915.

Affirming that the United States of America, the host country, is under a legal obligation to enable the Permanent Observer Mission of the Palestine Liberation Organization to establish and maintain premises and adequate functional facilities and to enable the personnel of the Mission to enter and remain in the United States to carry out their official functions,

1. *Supports* the efforts of the Secretary-General and expresses its great appreciation for his reports;

2. *Reaffirms* that the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations in New York is covered by the provisions of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations[1] and that it should be enabled to establish and maintain premises and adequate functional facilities and that the personnel of the Mission should be enabled to enter and remain in the United States of America to carry out their official functions;

3. *Considers* that the application of Title X of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, in a manner inconsistent with paragraph 2 above would be contrary to the international legal obligations of the host country under the Headquarters Agreement;

4. *Considers* that a dispute exists between the United Nations and the United States of America, the host country, concerning the interpretation or application of the Headquarters Agreement, and that the dispute settlement procedure set out in section 21 of the Agreement should be set in operation;

5. *Calls upon* the host country to abide by its treaty obligations under the Agreement and to provide assurance that no action will be taken that would infringe on the current arrangements for the official functions of the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations in New York;

6. *Requests* the Secretary-General to continue in his efforts in pursuance of the provisions of the Agreement, in particular section 21 thereof, and to report without delay to the Assembly;

7. *Decides* to keep the matter under active review.

B

The General Assembly,

Recalling its resolution 42/210 B of 17 December 1987 and bearing in mind its resolution 42/229 A above,

Having considered the reports of the Secretary-General of 10 and 25 February 1988[2],

Affirming the position of the Secretary-General that a dispute exists between the United Nations and the host country concerning the interpretation or application of the Agreement between the United Nations and the United States of America

[1] See resolution 169 (II).
[2] A/42/915 and Add.1.

Affirmant que les Etas-Unis, pays hôte, ont l'obligation juridique de donner à la mission permanente d'observation de l'Organisation de libération de la Palestine la possibilité d'établir et de maintenir des locaux et des installations adéquates pour l'accomplissement de sa tâche et de permettre au personnel de la mission d'entrer aux Etats-Unis et d'y demeurer pour s'acquitter de ses fonctions officielles,

1. *Appuie* les efforts du Secrétaire général et exprime sa reconnaissance pour les rapports qu'il a établis;

2. *Réaffirme* que la mission permanente d'observation de l'Organisation de libération de la Palestine auprès de l'Organisation des Nations Unies à New York est couverte par les dispositions de l'accord entre l'Organisation des Nations Unies et les Etats-Unis d'Amérique relatif au siège de l'Organisation des Nations Unies[1], qu'il devrait lui être donné la possibilité d'établir et de maintenir des locaux et des installations adéquates pour l'accomplissement de sa tâche et que le personnel de la mission devrait pouvoir entrer aux Etats-Unis d'Amérique et y demeurer pour s'acquitter de ses fonctions officielles;

3. *Considère* que l'application du titre X du *Foreign Relations Authorization Act* pour les exercices 1988 et 1989 de façon non conforme au paragraphe 2 ci-dessus serait contraire aux obligations juridiques internationales contractées par le pays hôte au titre de l'accord de siège;

4. *Considère* qu'un différend existe entre l'Organisation des Nations Unies et les Etats-Unis d'Amérique, pays hôte, quant à l'interprétation ou l'application de l'accord de siège, et que la procédure de règlement des différends visée à la section 21 de l'accord devrait être engagée;

5. *Demande* au pays hôte de respecter les obligations qu'il a contractées au titre de l'accord et de donner l'assurance qu'il ne sera pris aucune mesure qui porte atteinte aux arrangements actuellement en vigueur en ce qui concerne les fonctions officielles de la mission permanente d'observation de l'Organisation de libération de la Palestine auprès de l'Organisation des Nations Unies à New York;

6. *Prie* le Secrétaire général de poursuivre ses efforts en application des dispositions de l'accord, en particulier de la section 21, et de faire rapport sans délai à l'Assemblée;

7. *Décide* de garder la question activement à l'examen.

B

L'Assemblée générale,

Rappelant sa résolution 42/210 B du 17 décembre 1987 et ayant à l'esprit sa résolution 42/229 A ci-dessus,

Ayant examiné les rapports du Secrétaire général, en date des 10 et 25 février 1988[2],

Confirmant la position du Secrétaire général qui a constaté l'existence d'un différend entre l'Organisation des Nations Unies et le pays hôte quant à l'interprétation ou l'application de l'accord entre l'Organisation des Nations

[1] Voir résolution 169 (II).
[2] A/42/915 et Add.1.

regarding the Headquarters of the United Nations, dated 26 June 1947[1], and noting his conclusions that attempts at amicable settlement were deadlocked and that he had invoked the arbitration procedure provided for in section 21 of the Agreement by nominating an arbitrator and requesting the host country to nominate its own arbitrator,

Bearing in mind the constraints of time that require the immediate implementation of the dispute settlement procedure in accordance with section 21 of the Agreement,

Noting from the report of the Secretary-General of 10 February 1988[2] that the United States of America was not in a position and was not willing to enter formally into the dispute settlement procedure under section 21 of the Headquarters Agreement and that the United States was still evaluating the situation,

Taking into account the provisions of the Statute of the International Court of Justice, in particular Articles 41 and 68 thereof,

Decides, in accordance with Article 96 of the Charter of the United Nations to request the International Court of Justice, in pursuance of Article 65 of the Statute of the Court, for an advisory opinion on the following question, taking into account the time constraint:

> "In the light of facts reflected in the reports of the Secretary-General[3], is the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations[1], under an obligation to enter into arbitration in accordance with section 21 of the Agreement?"

CERTIFIED TRUE COPY.

New York, N.Y., 2 March 1988.

(Signed) Carl-August FLEISCHHAUER,
The Legal Counsel.

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[1] See resolution 169 (II).
[2] A/42/915.
[3] A/42/915 and Add.1.

Unies et les Etats-Unis d'Amérique relatif au siège de l'Organisation des Nations Unies, en date du 26 juin 1947[1], et notant qu'il a conclu que les tentatives de règlement à l'amiable étaient dans une impasse et que, conformément à la procédure d'arbitrage prévue à la section 21 de l'accord, il a désigné un arbitre et prié le pays hôte de désigner le sien,

Considérant qu'étant donné des contraintes de temps il faut appliquer immédiatement la procédure de règlement des différends conformément à la section 21 de l'accord,

Notant qu'il ressort du rapport du Secrétaire général, en date du 10 février 1988[2], que les Etats-Unis d'Amérique ne pouvaient ni ne souhaitaient devenir officiellement partie à la procédure de règlement des différends prévue à la section 21 de l'accord de siège, et que les Etats-Unis étaient encore en train d'examiner la situation,

Tenant compte des dispositions du Statut de la Cour internationale de Justice, en particulier des articles 41 et 68,

Décide, conformément à l'article 96 de la Charte des Nations Unies, de prier la Cour internationale de Justice, en application de l'article 65 de son Statut, de donner un avis consultatif sur la question suivante, en tenant compte des contraintes de temps:

> « Etant donné les faits consignés dans les rapports du Secrétaire général[3], les Etats-Unis d'Amérique, en tant que partie à l'accord entre l'Organisation des Nations Unies et les Etats-Unis d'Amérique relatif au siège de l'Organisation des Nations Unies[1], sont-ils tenus de recourir à l'arbitrage conformément à la section 21 de l'accord? »

COPIE CERTIFIÉE CONFORME.

New York, le 3 mars 1988.

(*Signé*) Carl-August FLEISCHHAUER,
le Conseiller juridique.

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[1] Voir résolution 169 (II).
[2] A/42/915.
[3] A/42/915 et Add.1.

DOSSIER TRANSMIS PAR LE SECRÉTAIRE GÉNÉRAL DES NATIONS UNIES

(ARTICLE 65, PARAGRAPHE 2, DU STATUT)

DOSSIER TRANSMITTED BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

(ARTICLE 65, PARAGRAPH 2, OF THE STATUTE)

INTRODUCTORY NOTE

The Request

1. On 2 March 1988, the General Assembly, at its 104th plenary meeting, adopted under item 136 of its agenda resolution 42/229B entitled "Report of the Committee on Relations with the Host Country" (Dossier, No. 16). By this resolution, the General Assembly decided to request the Court for an advisory opinion.

Framework of the Dossier

2. The Dossier, prepared pursuant to paragraph 2 of Article 65 of the Statute of the Court, contains materials likely to throw light upon the question on which the advisory opinion of the Court is requested. The materials in the Dossier are certified true copies, numbered consecutively, and identified, as appropriate, by title or official United Nations symbol.

3. The Dossier is divided into three Parts. Part I contains materials relating to the proceedings leading to the request by the General Assembly for an advisory opinion and includes: relevant United Nations documentation connected with the proceedings (Nos. 1 to 28), correspondence between the United Nations and the Permanent Mission of the United States of America to the United Nations (Nos. 29 to 37), and materials relating to relevant United States legislation (Nos. 38 to 55). Part II contains materials relevant to the Observer Status of the Palestine Liberation Organization. Part III covers materials relevant to the Headquarters Agreement.

Introduction to Part I

4. The General Assembly at its forty-second session, on 18 September 1987, assigned agenda item 136, "Report of the Committee on Relations with the Host Country", to its Sixth Committee.

5. The Sixth Committee had before it the Report of the Committee on Relations with the Host Country, A/42/26 (No. 17). Paragraph 46 of this Report referred to an Amendment to the Foreign Relations Authorization Bill which was then under consideration in the Senate of the United States of America. The Amendment was to render it unlawful, *inter alia*, for the Palestine Liberation Organization (PLO) to establish and maintain office premises or office facilities in New York (No. 17, p. 11, *infra*). The development of this legislation through the United States Congress is summarized in paragraph 10 below.

6. The views expressed in the Committee on Relations with the Host Country by the members of the Committee and by the Legal Counsel of the United Nations are reflected in paragraphs 47 to 54 of the Committee's Report (No. 17).

7. The Sixth Committee considered agenda item 136 at its 56th, 57th, 58th, 61st and 62nd meetings on 24 and 25 November, and 9 and 11 December 1987. The views expressed in the Sixth Committee with respect to the Amendment are reflected in summary records of the meetings of the Sixth Committee (Nos. 18 to 22).

8. The Sixth Committee also had before it under agenda item 136 draft

resolution A/C.6/42/L.20, dated 23 November 1987 (No. 23) which was subsequently revised in A/C.6/L.20/Rev.1 (No. 24) and further revised in A/C.6/42/L.20/Rev.2 (No. 25). At its 62nd meeting on 11 December 1987, the Sixth Committee adopted draft resolution A/C.6/42/L.20/Rev.2 by a recorded vote of 100 to 1 (No. 22).

9. The Report of the Sixth Committee on agenda item 136, A/42/878, dated 14 December 1987 (No. 26), was considered by the General Assembly at its 98th Plenary Meeting, held on 17 December 1987 (A/42/PV.98, No. 27). The General Assembly at its 98th plenary meeting on 17 December 1987 adopted resolution 42/210B by a recorded vote of 145 to 1 (No. 27, p. 7).

10. Meanwhile, at the first session of the 100th Congress of the United States in 1987, various bills were tabled in the United States Congress concerning removal of offices of the PLO from the United States. Introductory and explanatory statements concerning those bills (Nos. 39, 40 and 41), as well as other statements (Nos. 42, 43, 44 and 45) were made by members of Congress. One such bill (No. 40) was re-introduced, without change, in the United States Senate as an Amendment to the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, and was adopted by the Senate (No. 46) on 8 October 1987. As the two houses of Congress had adopted different legislation regarding the Foreign Relations Authorization Act, conferees were appointed by both houses to serve on a Committee of Conference to reconcile those differences. The House of Representatives instructed its conferees to accept the Amendment which had been adopted by the Senate (No. 47). Before the matter was reported out of the Committee of Conference, statements were made on the Amendment by members of Congress (Nos. 48, 49 and 50). The Committee of Conference report of 14 December 1987 provided for the incorporation of the Amendment adopted by the Senate into the Foreign Relations Authorization Act (No. 51). The Committee of Conference version of the Foreign Relations Authorization Act was considered and adopted by the House of Representatives on 15 December 1987 and by the Senate on 16 December 1987 (Nos. 52 and 53). A statement was made by one member of Congress on Title X of the Foreign Relations Authorization Act after its adoption by both houses (No. 54).

11. On 22 December 1987, the President of the United States signed into law the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Title X of which is entitled the "Anti-Terrorism Act of 1987" (No. 38), and made a statement thereon (No. 55).

12. On 13 October 1987, which was before the completion of the legislative process in the United States Congress with respect to the Amendment, the Secretary-General wrote to the Permanent Representative of the United States to the United Nations and made known to the latter his views about the then proposed Amendment (No. 29). This began an exchange of correspondence in this matter between the Secretary-General and the Permanent Representative of the United States to the United Nations. The relevant correspondence during this period (i.e., between 13 October 1987 and 4 March 1988) is reproduced in the Dossier (Nos. 29 to 37). The Reports of the Secretary-General (Nos. 1 and 2) contain a summary of the developments that took place between the adoption on 17 December 1987 of Assembly resolution 42/210B and the submission by the Secretary-General of an addendum to his second Report to the General Assembly on 25 February 1988.

13. On 29 February 1988, the General Assembly resumed its forty-second session pursuant to requests made by the Permanent Representative of Bahrain, as Chairman of the Arab Group (No. 3), and the Permanent Representative of Zimbabwe, as Chairman of the Co-ordinating Bureau of the Movement of Non-

Aligned Countries (No. 4). The Permanent Representative of Kuwait, on behalf of the members of the Organization of the Islamic Conference in New York (No. 5), and the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, on behalf of the Committee (No. 6) supported the request to reconvene the General Assembly.

14. The General Assembly resumed its consideration of agenda item 136, "Report of the Committee on Relations with the Host Country", at its 100th to 104th plenary meetings on 29 February and 1 to 2 March 1988. The views expressed at these meetings are reflected in the provisional verbatim records: A/42/PV.100 to 104 (Nos. 11 to 15).

15. On 29 February 1988, draft resolutions A/42/L.46 and A/42/L.47 were submitted to the General Assembly for consideration (Nos. 7 and 9) ; additional sponsors were subsequently added (Nos. 8 and 10).

16. At its 104th plenary meeting on 2 March 1988, the General Assembly adopted resolution 42/229B by 143 votes to none (No. 15).

Introduction to Part II

17. Part II of the Dossier contains material relevant to the observer status of the Palestine Liberation Organization (PLO). In view of the fact that the permanent observer status has evolved in the United Nations from practice of the past four decades, the presentation of Part II follows that process of evolution from the Permanent Observers of non-member States (Nos. 56 to 57) to Permanent Observers of intergovernmental organizations (Nos. 58 to 61), and to Permanent Observers of other entities, including the PLO (Nos. 62 to 75).

18. Each section contains (i) data concerning the legislative authorities for the establishment of permanent observers and (ii) statements by the Secretariat as to the status, privileges and immunities enjoyed by such observers. The last section also contains a subsection on decisions of relevant cases in United States courts.

Materials Specifically Relevant to the PLO

19. Dossier Nos. 63 to 72 refer to decisions taken by the General Assembly, the Security Council and the Economic and Social Council upon which the PLO observer status is based. After several decisions relating to the participation of the PLO in conferences (Nos. 63 to 65), the General Assembly granted observer status to the PLO by its resolution 3237 (XXIX) (No. 66) adopted at its 2296th plenary meeting, on 22 November 1974 (No. 67). At its next session, the Assembly by its resolution 3375 (XXX) of 10 November 1975 issued an invitation to the PLO to participate in all efforts, deliberations and conferences on the Middle East, held under the United Nations auspices (No. 68).

20. The PLO was first invited to participate in the discussion of a question in the Security Council at its 1859th meeting on 4 December 1975. At the same time, the Security Council decided by a vote that its invitation would confer upon the PLO the same rights of participation as those conferred on a member State invited under rule 37 of the Provisional Rules of Procedure (No. 70).

21. A similar decision was thereafter taken each time when the participation of the PLO in the Council was proposed, for example at its 2785th meeting on 27 January 1988 (No. 71).

22. The Economic and Social Council, by resolution 129 (LIX) adopted at its 1954th meeting on 3 July 1975, invited the PLO to participate in an observer

capacity in its deliberations on any matter of particular concern to that Organization (No. 69).

23. Pursuant to resolution 2089 (LXIII) of 22 July 1977 of the Economic and Social Council, the PLO is a full member of the Economic Commission for Western Asia which is a regional intergovernmental organ of the Council (No. 72).

24. Dossier Nos. 73 to 75 contain statements by the United Nations Secretariat as to the legal status of the office and representatives of the PLO to the United Nations.

25. The last section of Part II of the Dossier contains two relevant judgments of two United States federal district courts (for the Eastern District of New York and the District of Massachusetts) (Nos. 76 and 77).

Introduction to Part III

26. Part III of the Dossier contains materials relevant to the Headquarters Agreement. It has three sections. Section I provides the legislative history of the Agreement on the basis of the materials available in the United Nations archives. Section II contains the legislative history of Public Law No. 80-357, by which the United States Congress approved the Agreement. Section III relates to the question of access to Headquarters of representatives of certain non-governmental organizations, raised in 1953 during the 15th and 16th sessions of the Economic and Social Council.

Legislative History of the Headquarters Agreement

27. The Preparatory Commission of the United Nations in 1945 transmitted to the General Assembly, as a working paper, a draft treaty to be concluded by the United Nations with the United States for the location of the Headquarters of the United Nations (No. 78) and a draft convention on the Privileges and Immunities of the United Nations (not included herein). It also recommended to the General Assembly that the draft treaty should be negotiated with reference to the general principles set forth in both those instruments.

28. In its resolution 6 (I) B on Privileges and Immunities, adopted on 13 February 1946, the General Assembly authorized the Secretary-General (with the assistance of a Negotiating Committee composed of persons appointed by ten member States) to negotiate with the competent authorities of the United States of America the arrangements required as a result of the establishment of the seat of the United Nations in the United States (No. 79). By the same resolution, the Assembly transmitted to the Secretary-General the draft convention (formerly called the draft treaty) "for use in these negotiations as a basis of discussion". The Assembly requested that the Secretary-General report to it the results of the negotiations (No. 79)[1].

29. From 15 May to 6 June 1946, the Secretary-General convened a series of meetings, attended by his own representatives and those of the members of the

[1] Section 39 of the draft convention (formerly Art. 30) now made the referral of any differences to arbitration obligatory rather than optional. An additional sentence was added at the end of section 40 (formerly Art. 31) requiring the umpire to render a final decision after receipt of an International Court of Justice advisory opinion, having regard to that opinion.

Negotiating Committee, to prepare for the negotiations with the United States authorities[1].

30. In a working paper dated 18 May 1946 (No. 80) prepared by the United States Department of State, the United States commented on the various provisions of the 13 February 1946 draft[2].

31. From 10 to 18 June 1946, the representatives of the Secretary-General, assisted by the Negotiating Committee, met with the competent authorities of the United States in Washington to negotiate the draft agreement (Nos. 81 and 82). They produced a draft convention agreement between the United Nations and the United States of America (No. 84).

32. The Secretary-General and the Negotiating Committee submitted to the second part of the first session of the General Assembly a joint report on the negotiations in Washington, dated 1 September 1946 (No. 83). The report contained a revised text of the draft convention (No. 84)[3].

33. On 14 December 1946 the General Assembly, by its resolution 99 (I), resolved that the Secretary-General be authorized to negotiate and conclude with the appropriate authorities of the United States an agreement concerning the arrangements required as a result of the Assembly's decision to establish the permanent headquarters of the United Nations in the City of New York (No. 86). The Assembly further resolved that in the negotiations the Secretary-General should be guided by the provisions of the draft agreement and that the agreement would only come into force after it had been approved by the General Assembly.

34. In pursuance of resolution 99 (I), the Secretary-General resumed his negotiation with the competent United States authorities[4] and on 26 June 1947 signed, with the Secretary of State of the United States, the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (No. 87).

35. In his report of 3 September 1947, the Secretary-General reported to the General Assembly on the results of his negotiations with the United States authorities, including the signing of the Agreement (No. 85)[5].

36. The General Assembly referred the Agreement to its Sixth Committee which in turn referred it to its Sub-Committee I on Privileges and Immunities. The Sub-Committee reported to the Sixth Committee on 17 October 1947 and recommended its approval (No. 88). The Sixth Committee endorsed the Sub-Committee's report and recommended to the Assembly on 27 October 1947 that the Agreement be approved (No. 88). On 31 October 1947 the Assembly approved the report of the Sixth Committee and adopted resolution 169 (II) (No. 89). By Part A of the resolution, the General Assembly approved "the Agreement signed on 26 June 1947" and authorized the Secretary-General to bring that Agreement into force in the manner provided in section 28 thereof, and to perform on behalf of the United Nations such acts or functions as may be required by that Agreement;

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[1] The materials available in the United Nations archives in this regard are not useful for the issues currently under consideration.

[2] A redraft of section 19, deletion of section 20, and redraft of section 39 (No. 80, pp. 121 and 123, *infra*).

[3] Changes were made, *inter alia*, in sections 20 (formerly 19), 21 (formerly 20), and 38 (formerly 39). Section 24 of the 1946 draft was deleted.

[4] The materials available in the United Nations archives in this regard are very limited and do not shed light on the issues currently under consideration.

[5] In view of the fact that the decision to establish the permanent headquarters of the United Nations in the City of New York called for an extensive revision of the draft agreement, many changes had been introduced (No. 85). Article IV departed considerably from the previous drafts.

the text of the Agreement was annexed to the resolution. Accordingly, pursuant to section 28, there was an exchange of notes on 21 November 1947 between the Secretary-General and the Permanent Representative of the United States to the United Nations, thus bringing the Agreement into effect on that date. The Headquarters Agreement was then registered with the United Nations Secretariat and published by it according to Article 102 of the Charter.

Legislative History of United States Public Law No. 80-357[1]

37. Following signature on 26 June 1947 of the Headquarters Agreement (see para. 34 above), the President of the United States, in a 2 July 1947 message (No. 90) transmitted the Agreement to the Congress for its consideration. On the following day, Senators Ives and Wagner of New York introduced a joint resolution in the Senate (S.J.Res. 144) to authorize the President to bring the Headquarters Agreement into effect (No. 1).

38. The joint resolution was referred to the Senate Committee on Foreign Relations, which met in executive session on 10 and 12 July 1947, and on 15 July unanimously reported (No. 92) the resolution favourably to the Senate, with one amendment, adding a new section (6). The amendment was agreed to by the Senate on 17 July and, on 18 July, the joint resolution, as amended, was referred to the House of Representatives for its consideration (No. 93).

39. In the House of Representatives the amended joint resolution was referred to the Committee on Foreign Affairs, which, in turn, referred the joint resolution to its Sub-Committee No. 6 on International Organizations and International Law which, in anticipation of the resolution being assigned to it, had, on 10 July, held a hearing, with a further one held on 19 July. In its report of 25 July (No. 94) the Committee on Foreign Affairs recommended that the joint resolution be passed, as further amended by it. On the same day the Committee's report was referred to the Committee of the Whole of the House on the State of the Union. On 26 July the House adopted the resolution with the amendments recommended by the Committee and returned it to the Senate (No. 95).

40. The Senate adopted the amended resolution on 26 July (No. 95).

41. On 28 July 1947, S.J.Res. 144 was presented to the President of the United States, who subsequently notified the Senate that he had approved it on 4 August 1947 (No. 96).

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[1] The United States legislative materials (Nos. 90-96) deal solely with passage of Senate Joint Resolution 144 (S.J.Res. 144), which authorized the President to bring into effect the Headquarters Agreement, through the legislative process. S.J.Res. 144, as amended, was enacted as Public Law No. 80-357 on 4 August 1947 (No. 96). The only documents included in the dossier are those having some substantive content and that were available in the United Nations files and libraries. Thus, documents that merely record formal transactions or transmissions are not included.

In recent years extensive materials have been published on originally confidential internal United States government discussions, mainly involving the Departments of State and Justice and the United States Representative at the United Nations, on various aspects of the Headquarters Agreement, including positions to be taken in United Nations fora, definition of the headquarters district and its immediate vicinity, implementation of the agreement, visa issues involving persons invited to attend United Nations meetings, regulation of the movement of persons covered by section 11, and the effect of the "security reservation" contained in P.L. No. 80-357, paragraph 6. These papers, though now available, do not constitute part of the *travaux préparatoires* of the Headquarters Agreement, as they were not contemporaneously available to the other party, the United Nations. Those documents are reproduced in the following volumes of *Foreign Relations of the United States*, 1947, Vol. I, 24-30, 43-46, 48-52, 61-67 ; *ibid.*, 1948, Vol. I, 59-63, 65-78 ; *ibid.*, 1950, Vol. II, 53-54, 65-71, 75-77 ; *ibid.*, 1951, Vol. I, 48 ; *ibid.*, 1952-1954, Vol. III, 198-202, 214-219, 237-239, 241-244, 250-254, 257-260, 262-270, 275-284, 287-288, 290-300, 302-304.

The Question of Access to Headquarters of Representatives of Non-Governmental Organizations

42. By its resolution 606 (VI), 1 February 1952, entitled "Application of the Headquarters Agreement to representatives of non-governmental organizations", the General Assembly authorized the Secretary-General to make arrangements to enable the representative designated by any non-governmental organization having consultative status to attend public meetings of the General Assembly whenever economic and social matters are discussed which are within the competence of the Economic and Social Council and the organizations concerned (No. 97). Thus, the Economic and Social Council by its resolution 455 (XIV) of 25 June 1952, requested the Secretary-General to invite such organizations in categories A and B to send representatives to attend public meetings of the General Assembly at which economic and social matters within its competence are discussed (No. 98).

43. On 1 April 1953, at the 674th meeting of the Economic and Social Council, a representative raised the question of access to Headquarters of certain representatives of non-governmental organizations whose requests for visas had been denied by the Host Country (No. 99, para. 2). At its 679th meeting on 9 April, the representative of the United States informed the Council that the United States had exercised "the right to safeguard its security, which it had specifically reserved in section 6 of the joint resolution (Public Law 357)" (*ibid.*, paras. 3-5). Several delegates participated in the brief debate which ensued (*ibid.*, paras. 6-12). Further discussion was deferred until the Legal Department of the United Nations had given its opinion on the United States decision.

44. The Legal Department transmitted its memorandum of 10 April 1953 (No. 100) and concluded that

> "persons falling within the classes referred to in section 11 of the Headquarters Agreement are entitled to transit to and from the Headquarters District, and that this right of transit has not been made the subject of any reservation" (No. 100).

45. The Economic and Social Council thereupon included an item on the provisional agenda (item 33) of its sixteenth session, requesting the Secretary-General to report on his negotiations with the United States. The Secretary-General submitted a progress report on 27 July 1953 stating that there was a measure of agreement which might help to remove difficulties over the matter in the future and that any remaining questions would be resolved satisfactorily in the application of the Headquarters Agreement or in further negotiations with representatives of the United States (No. 101).

46. The progress report of the Secretary-General was discussed by the Economic and Social Council at its 743rd and 745th meetings, held on 31 July and 1 August 1953, respectively. The views expressed by the Secretary-General and by representatives are reflected in the summary records of those meetings (Nos. 102 and 103).

47. At its 745th meeting, the Council unanimously adopted a resolution (No. 104).

Part IV. Materials relating to the Proceedings Subsequent to the Request by the General Assembly for an Advisory Opinion

1. Part IV of the Dossier contains materials relating to the proceedings subsequent to the request by the General Assembly for an advisory opinion.

2. On 11 March 1988, the Acting Permanent Representative of the United States to the United Nations addressed a letter to the Secretary-General informing him that the Attorney General of the United States would initiate legal action to close the PLO Observer Mission to the United Nations on or about 21 March 1988, if the PLO had not complied with the United States law to close the PLO Observer Mission on that date (No. 105, Annex I). The same day the Attorney General of the United States addressed a letter to the Permanent Observer of the PLO to the United Nations (No. 105, Annex II, Appendix). The Secretary-General immediately transmitted these communications to the General Assembly (No. 105) as a continuation of his earlier report, pursuant to the charge by the Assembly in resolution 42/229A (No. 16). Also on 11 March, the Assistant Attorney General in charge of the office of the Legal Counsel of the United States Department of Justice held a press briefing on this matter, an unofficial transcript of which appears in document No. 116.

3. On 14 March, the Permanent Observer of the PLO replied (No. 114, Annex I) to the letter he had received from the Attorney General; the latter responded on 21 March (No. 114, Annex II). On 15 March, the Secretary-General replied to the 11 March letter from the Acting Permanent Representative of the United States and made known to the latter his views about the decision of the United States to close the PLO Observer Mission to the United Nations (No. 106, Annex) ; he also transmitted this communication to the General Assembly as a further continuation of his report (No. 106).

4. On 14 March, communications were received from the Permanent Representatives of the Libyan Arab Jamahiriya and Algeria to the United Nations addressed to the Secretary-General with the request that these communications be circulated as documents of the 43rd session of the General Assembly (Nos. 118 and 119). On 17 March, the Permanent Representative of Saudi Arabia to the United Nations transmitted to the Secretary-General a communiqué issued on 16 March 1988, by the twenty-sixth session of the Ministerial Council of the Gulf Co-operation Council in Riyadh, Saudi Arabia (No. 107).

5. Pursuant to a decision taken at the 104th meeting of the 42nd session, held on 2 March, and in the light of the developments reflected in the Secretary-General's reports (Nos. 105 and 106), the General Assembly again resumed its session to consider its agenda item on "Report of the Committee on Relations with the Host Country". The views expressed during this portion of the session, from 18 to 23 March, are reflected in the provisional verbatim records (Nos. 109-113).

6. On 22 March, draft resolution A/42/L.48 was submitted by 62 sponsors (No. 108). At its 109th plenary meeting, on 23 March, the General Assembly adopted that draft without change, as resolution 42/230, by 148 votes to 2, with no abstentions (No. 115). At the same meeting it decided to proceed with consultations with a view to reconvening the General Assembly before 11 April 1988, to continue consideration of agenda item 136 (No. 113, p. 23 *infra*).

7. On 22 March, the Department of Justice issued a Complaint through the United States District Court for the Southern District of New York, addressed to the PLO, the Permanent Observer Mission of the PLO, the Permanent Observer of the PLO and to five members of his staff, asking that the Court, pursuant to the Anti-Terrorism Act of 1987, *inter alia*, enjoin the defendants from using or otherwise maintaining the building that at present houses the PLO Observer Mission, or from seeking other premises, or from spending any funds from the PLO for living expenses or other purposes, or from receiving any funds from the PLO (No. 117). The Complaint required a response within 20 days.

CONTENTS OF THE DOSSIER [1]

Part I of the Dossier. Documents Relating to the Proceedings Leading to the Request by the General Assembly for an Advisory Opinion

A. Documents of the Forty-second Session of the General Assembly (Resumed) [2]

1. Report of the Committee on Relations with the Host Country

(1)	Report of the Secretary-General	A/42/915 (mimeographed)
(2)	Report of the Secretary-General Addendum	A/42/915/Add.1 (mimeographed)

2. Request for the resumption of the forty-second session

(3)	Letter dated 18 February 1988 from the Permanent Representative of Bahrain to the United Nations addressed to the President of the General Assembly	A/42/919 (mimeographed)
(4)	Letter dated 22 February 1988 from the Permanent Representative of Zimbabwe to the United Nations addressed to the President of the General Assembly	A/42/921 (mimeographed)
(5)	Letter dated 22 February 1988 from the Permanent Representative of Kuwait to the United Nations addressed to the President of the General Assembly	A/42/922 (mimeographed)
(6)	Letter dated 24 February 1988 from the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People addressed to the President of the General Assembly	A/42/924 (mimeographed)

3. Report of the Committee on Relations with the Host Country

(7)	General Assembly, Report of the Committee on Relations with the Host Country — Afghanistan Algeria, Bahrain, Burkina Faso, Byelorussian Soviet Socialist Republic, Comoros, Cuba, Czechoslovakia, Democratic Yemen, Djibouti, German Democratic Republic, Ghana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Lao People's Democratic Republic, Lebanon, Libyan Arab Jamahiriya, Malaysia, Malta, Mauritania, Mongolia, Morocco, Nicaragua, Oman,	A/42/L.46 (mimeographed)

[1] Received in the Registry in French and in English from 10 to 28 March 1988. *[Note by the Registry.]*

[2] Documents not reproduced. *[Note by the Registry.]*

Qatar, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Syrian Arab Republic, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, Vanuatu, Viet Nam, Yemen, Yugoslavia, Zambia and Zimbabwe: draft resolution

(8) General Assembly, Report of the Committee on Relations with the Host Country — Afghanistan, Algeria, Bahrain, Burkina Faso, Byelorussian Soviet Socialist Republic, Comoros, Cuba, Czechoslovakia, Democratic Yemen, Djibouti, German Democratic Republic, Ghana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Lao People's Democratic Republic, Lebanon, Libyan Arab Jamahiriya, Malaysia, Malta, Mauritania, Mongolia, Morocco, Nicaragua, Oman, Qatar, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Syrian Arab Republic, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, Vanuatu, Viet Nam, Yemen, Yugoslavia, Zambia and Zimbabwe: draft resolution — A/42/L.46, Add.1 (mimeographed)

Addendum — Add the following countries to the list of sponsors of the draft resolution: Bangladesh, Botswana, Brunei Darussalam, Bulgaria, Guyana, Madagascar, Mali, Pakistan, Philippines, Poland, Turkey, Uganda and Zambia

(9) General Assembly, Report of the Committee on Relations with the Host Country — Afghanistan, Algeria, Bahrain, Burkina Faso, Byelorussian Soviet Socialist Republic, Comoros, Cuba, Czechoslovakia, Democratic Yemen, Djibouti, German Democratic Republic, Ghana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Lao People's Democratic Republic, Lebanon, Libyan Arab Jamahiriya, Malaysia, Malta, Mauritania, Mongolia, Morocco, Nicaragua, Oman, Qatar, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Syrian Arab Republic, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, Vanuatu, Viet Nam, Yemen, Yugoslavia, Zambia and Zimbabwe: draft resolution — A/42/L.47 (mimeographed)

(10) General Assembly, Report of the Committee on Relations with the Host Country — Afghanistan, Algeria, Bahrain, Burkina Faso, Byelorussian Soviet Socialist Republic, Comoros, Cuba, Czechoslovakia, Democratic Yemen, Djibouti, German Democratic Republic, Ghana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Lao People's Democratic Republic, Lebanon, Libyan Arab Jamahiriya, Malaysia, Malta, Mauri- — A/42/L.47/Add.1 (mimeographed)

tania, Mongolia, Morocco, Nicaragua, Oman, Qatar, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Syrian Arab Republic, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, Vanuatu, Viet Nam, Yemen, Yugoslavia, Zambia and Zimbabwe: draft resolution

Addendum — Add the following countries to the list of sponsors of the draft resolution: Bangladesh, Botswana, Brunei Darussalam, Bulgaria, Guyana, Madagascar, Mali, Pakistan, Philippines, Poland, Turkey, Uganda and Zambia

4. Provisional Verbatim Records

(11) General Assembly, Provisional Verbatim Record of the 100th meeting, 29 February 1988 — A/42/PV.100 (mimeographed)

(12) General Assembly, Provisional Verbatim Record of the 101st meeting, 29 February 1988 — A/42/PV.101 (mimeographed)

(13) General Assembly, Provisional Verbatim Record of the 102nd meeting, 1 March 1988 — A/42/PV.102 (mimeographed)

(14) General Assembly, Provisional Verbatim Record of the 103rd meeting, 1 March 1988 — A/42/PV.103 (mimeographed)

(15) General Assembly, Provisional Verbatim Record of the 104th meeting, 2 March 1988 — A/42/PV.104 (mimeographed)

(16) Resolutions adopted by the General Assembly: 42/229A and B: Report of the Committee on Relations with the Host Country, 2 March 1988 — A/RES/42/229 (mimeographed)

B. Forty-second Session of the General Assembly[1]

(17) Report of the Committee on Relations with the Host Country — *General Assembly, Official Records*, forty-second session, Supplement No. 26 (A/42/26) (mimeographed) (see pp. 8-13 and p. 17)

(18) Sixth Committee, Summary Record of the 56th meeting, 24 November 1987. Agenda item 136: Report of the Committee on Relations with the Host Country — A/C.6/42/SR.56 (mimeographed) (see pp. 5-13)

(19) Sixth Committee, Summary Record of the 57th meeting, 25 November 1987. Agenda item 136: Report of the Committee on Relations with the Host Country — A/C.6/42/SR.57 (mimeographed) (see pp. 2-3)

(20) Sixth Committee, Summary Record of the 58th meeting, 25 November 1987. Agenda item 136: Report of the Committee on Relations with the Host Country — A/C.6/42/SR.58 (mimeographed) (see p. 2)

[1] Document not reproduced. *[Note by the Registry.]*

(21)	Sixth Committee, Summary Record of the 61st meeting, 9 December 1987. Agenda item 136: Report of the Committee on Relations with the Host Country	A/C.6/42/SR.61 (mimeographed) (see p. 2)
(22)	Sixth Committee, Summary Record of the 62nd meeting, 11 December 1987. Agenda item 136: Report of the Committee on Relations with the Host Country	A/C.6/42/SR.62 (mimeographed) (see pp. 2-6)
(23)	General Assembly, forty-second session, Sixth Committee, agenda item 136, Report of the Committee on Relations with the Host Country — Algeria, Bahrain, Democratic Yemen, Djibouti, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates and Yemen: draft resolution	A/C.6/42/L.20 (mimeographed)
(24)	General Assembly, forty-second session, Sixth Committee, agenda item 136, Report of the Committee on Relations with the Host Country — Algeria, Bahrain, Democratic Yemen, Djibouti, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates and Yemen: revised draft resolution	A/C.6/42/L.20/Rev.1 (mimeographed)
(25)	General Assembly, forty-second session, Sixth Committee, agenda item 136, Report of the Committee on Relations with the Host Country — Afghanistan, Algeria, Angola, Bahrain, Bangladesh, Cuba, Democratic Yemen, Djibouti, Ghana, India, Indonesia, Iraq, Jordan, Kuwait, Lao People's Democratic Republic, Lebanon, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mauritania, Morocco, Nicaragua, Oman, Pakistan, Qatar, Saudi Arabia, Senegal, Somalia, Sudan, Suriname, Syrian Arab Republic, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, United Arab Emirates, Viet Nam, Yemen, Yugoslavia and Zimbabwe: revised draft resolution	A/C.6/42/L.20/Rev.2 (mimeographed)
(26)	General Assembly, forty-second session, Sixth Committee, agenda item 136, Report of the Committee on Relations with the Host Country Report of the Sixth Committee — Rapporteur: Mr. Kenneth McKENZIE (Trinidad and Tobago)	A/42/878 (mimeographed)
(27)	General Assembly, Provisional Verbatim Record of the 98th meeting, 17 December 1987	A/42/PV.98 (mimeographed)
(28)	Resolutions adopted by the General Assembly: 42/210A and B. Report of the Committee on Relations with the Host Country, 17 December 1987	A/RES/42/210 (mimeographed)

C. Correspondence between the United Nations and the Permanent Mission of the United States of America to the United Nations

(29) Letter from the Secretary-General of the United Nations to the Permanent Representative of the United States

13 October 1987.

I am writing to you on a matter that is causing serious concern both to me and to a number of delegations to the United Nations. As you know, the United States Senate recently adopted an amendment to the State Department Appropriations Bill, upon the initiative of Senator Grassley of Iowa, that seeks to make unlawful the establishment or maintenance within the United States of any office of the Palestine Liberation Organization. The amendment would not only apply to the office of the Palestine Liberation Organization in Washington but also to the Palestine Liberation Organization Observer Mission to the United Nations.

I am aware that the Secretary of State is on record in stating the opposition of the United States Administration to the closure of the Palestine Liberation Organization Observer Mission to the United Nations. In a letter addressed to Senator Dole on 29 January 1987, the Secretary of State said that the Palestine Liberation Organization Observer Mission personnel are present in the United States as "invitees" of the United Nations within the meaning of the Headquarters Agreement between the United Nations and the United States, and that the United States was under an obligation to permit Palestine Liberation Organization personnel to enter and remain in the United States to carry out their official functions at United Nations Headquarters. I am in agreement with the views expressed by the Secretary of State in this matter and I would trust, in the circumstances, that the United States Government will continue to vigorously oppose any steps in the Congress to legislate against the Palestine Liberation Organization Observer Mission to the United Nations. Since the legislation runs counter to obligations arising from the Headquarters Agreement, I would like to underline the serious and detrimental consequences that it would entail.

(Signed) Javier PÉREZ DE CUÉLLAR.

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(30) Letter from the Permanent Representative of the United States to the Secretary-General of the United Nations

27 October 1987.

I am writing to acknowledge receipt of your letter of October 13, 1987, expressing concern over the recent United States Senate adoption of Senator Charles Grassley's amendment which proposes the closure of the Palestine Liberation Organization Observer Mission to the United Nations.

The Department of State understands and appreciates your concern with regard to the proposed legislation. As your letter notes, the Administration has vigorously opposed closure of the Palestine Liberation Organization Observer Mission to the United Nations.

I want to assure you that the Administration remains opposed to the proposed legislation, and will be raising the matter with the Congress. In this regard, we are hopeful that our efforts will produce a satisfactory resolution of the issue.

(Signed) Vernon A. WALTERS.

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(31) Letter from the Secretary-General of the United Nations to the Permanent Representative of the United States

7 December 1987.

I have been informed that legislation in the US Congress is far advanced which, if adopted, signed by the President into law and enforced, would in effect entail the closure of the Observer Mission of the PLO to the United Nations.

As I pointed out to you in my letter of 13 October 1987 as well as in our meeting of 1 December 1987, it is the legal position of the United Nations that the members of the PLO Observer Mission are, by virtue of General Assembly resolution 3237 (XXIX), invitees to the United Nations and that the United States is under an obligation to permit PLO personnel to enter and remain in the United States to carry out their official functions at the United Nations under the Headquarters Agreement. This position which also was the object of a statement by my Spokesman to the press, coincides with the position taken by the United States Administration in the letter addressed to the Chairman of the Committee on Foreign Relations of the United States Senate by the Secretary of State on 29 January 1987. Consequently, in the view of the United Nations, the United States is under a legal obligation to maintain the current arrangements for the PLO Observer Mission which have been in effect for the past 13 years.

Even at this late stage, I very much hope that it will be possible for the Administration, in line with its own legal position, to act to prevent the adoption of this legislation. However, I would be grateful if you could confirm that even if this proposed legislation becomes law, the present arrangements for the PLO Observer Mission would not be curtailed or otherwise affected. Without such assurance, a dispute between the United Nations and the United States concerning the interpretation or application of the Headquarters Agreement would exist and I would be obliged to enter into the dispute settlement procedure foreseen under Section 21 of the UN Headquarters Agreement of 1947.

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(32) Letter from the Secretary-General of the United Nations to the Permanent Representative of the United States

21 December 1987.

I wish to revert to my letter to you of 7 December 1987 concerning the PLO Observer Mission to the United Nations in New York. The General Assembly at its 98th Plenary Meeting on 17 December 1987 has formally adopted a resolution entitled Report of the Committee on Relations with the Host Country (a copy of which is attached). Operative paragraph 3 requests the Secretary-General to take effective measures to ensure full respect for the Headquarters Agreement and to report, without delay, to the General Assembly on any further development in this matter. In order that I might fulfil my responsibilities to the General Assembly in this regard, I would be grateful if you would inform me of any further developments regarding this pending legislation which would affect the PLO Mission to the United Nations, in particular the signing into law of the said legislation.

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(33) Letter from the Acting Permanent Representative of the United States to the Secretary-General of the United Nations

5 January 1988.

Thank you for your letters of December 7 and 21 to which I am responding on Ambassador Walters' behalf.

The legislation to which your letters refer is part of the "Foreign Relations Authorization Act, Fiscal Years 1988 and 1989", signed by President Reagan on December 22. Section 1003 of this law, relating to the Palestine Liberation Organization (PLO), is to take effect ninety days after that date. Because the provisions concerning the PLO Observer Mission may infringe on the President's constitutional authority and, if implemented, would be contrary to our international legal obligations under the United Nations Headquarters Agreement, the *Administration intends, during the ninety-day period before this provision is to take effect, to engage in consultations with the Congress in an effort to resolve this matter.*

We will, of course, keep you informed concerning further developments.

(Signed) Herbert S. OKUN.

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(34) Letter from the Secretary-General of the United Nations to the Permanent Representative of the United States

14 January 1988.

I would like to refer to the letter which Ambassador Okun addressed to me on your behalf on 5 January 1988 in response to my letters of 7 and 21 December 1987. By his letter, Ambassador Okun informed me that the legislation, to which my letters referred, was signed as part of the "Foreign Relations Authorization Act, Fiscal Years 1988 and 1989" by President Reagan on 22 December 1987. Ambassador Okun also informed me that Section 1003 of that Act relating to the Palestine Liberation Organization (PLO), is to take effect 90 days after that date. He continued that it is the intention of the US Administration to engage in consultations with the Congress during that 90-day period in an effort to resolve this matter.

As you will recall, I had, by my letter of 7 December, informed you that, in the view of the United Nations, the United States is under a legal obligation under the Headquarters Agreement of 1947 to maintain the current arrangements for the PLO Observer Mission, which have been in effect for the past 13 years. I had therefore asked you to confirm that if this legislative proposal became law, the present arrangements for the PLO Observer Mission would not be curtailed or otherwise affected, for without such assurance, a dispute between the United Nations and the United States concerning the interpretation and application of the Headquarters Agreement would exist and I would be obliged to initiate the dispute settlement procedure foreseen under Section 21 of the Headquarters Agreement of 1947.

By my letter of 21 December, I informed you that the General Assembly had, at its 98th Plenary meeting on 17 December 1987, formally adopted a resolution on the matter, the text of which I attached to my letter and operative paragraph 3 of which requests me to take effective measures to ensure full respect for the Headquarters Agreement.

I, of course, welcome the intentions of the US Administration to make use of the 90-day period in the way described by Ambassador Okun, and explained in greater detail by the Legal Adviser of the State Department, Judge Sofaer, in his meeting with the Legal Counsel on 12 January. Nevertheless, neither the letter of Ambassador Okun nor the statements made by Judge Sofaer constitute the assurance I had sought in my letter of 7 December 1987 nor do they ensure that full respect for the Headquarters Agreement can be assumed. Under these circumstances, a dispute exists between the Organization and the United States concerning the interpretation and application of the Headquarters Agreement and I hereby invoke the dispute settlement procedure set out in Section 21 of the said Agreement.

According to Section 21 *(a)*, an attempt has to be made at first to solve the dispute through negotiations and I would like to propose that the first round of the negotiating phase be convened on Wednesday, 20 January 1988, at 11.00 a.m. in Conference Room 3427 of the Secretariat Building. The negotiator for the United Nations will be Mr. Carl-August Fleischhauer, the Under-Secretary-General for Legal Affairs and Legal Counsel. Further meetings can be scheduled by the negotiators for the two sides. I understand that the agenda of the meeting was already discussed in the meeting between Judge Sofaer and Mr. Fleischhauer.

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(35) Letter from the Secretary-General of the United Nations to the Permanent Representative of the United States

2 February 1988.

I wish to refer to my letter dated 14 January 1988 in which I stated that a dispute exists between the United Nations and the United States concerning the interpretation and application of the Headquarters Agreement arising out of the signing into law of the Anti-Terrorism Act of 1987 and in which I invoked the dispute settlement procedure set out in Section 21 of the said agreement.

While I have not received an official response to my letter, consultations between the United Nations and the United States are being conducted regarding this matter on various levels. The United States side is still in the process of evaluating the situation which would arise out of the application of the legislation and pending the conclusion of such evaluation takes the position that it cannot enter into the dispute settlement procedure outlined in Section 21 of the Headquarters Agreement. The Section 21 procedure is the only legal remedy available to the United Nations in this matter and since the United States so far has not been in a position to give appropriate assurances regarding the deferral of the application of the law to the PLO Observer Mission, the time is rapidly approaching when I will have no alternative but to proceed either together with the United States within the framework of Section 21 of the Headquarters Agreement or by informing the General Assembly of the impasse that has been reached. This latter step may very well lead to an immediate request by the General Assembly for an advisory opinion of the International Court of Justice outside the framework of Section 21 in which event control over the proceedings will pass into the hands of member States.

Needless to say, I very much hope that we can avoid an unnecessary confrontation of this nature arising between the United Nations and the United States and I therefore urge you in the strongest terms to seek urgent measures by the United States to prevent such a situation from developing.

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(36) Letter from the Under-Secretary-General for Legal Affairs, the Legal Counsel, to the Legal Adviser of the Department of State of the United States

11 February 1988.

I would like to refer to the letter dated 14 January 1988 addressed to Ambassador Walters by the Secretary-General in the matter of the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations.

I would like to inform you that the United Nations has chosen Mr. Eduardo Jiménez de Aréchaga, former President and Judge of the International Court of Justice to be its Arbitrator in the event of an arbitration under Section 21 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations of 26 June 1947.

In view of the time constraints under which both parties find themselves, I would urge you to inform us as soon as possible of the choice made by the United States of America of an Arbitrator.

(Signed) Carl-August FLEISCHHAUER.

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(37) Letter from the Secretary-General of the United Nations to the Permanent Representative of the United States

4 March 1988.

At its 104th plenary meeting on 2 March 1988 the General Assembly adopted resolution 42/229 A in which, *inter alia*, it reaffirmed that the Permanent Observer Mission of the Palestine Liberation Organization (PLO) to the United Nations in New York is covered by the Headquarters Agreement between the United Nations and the United States of America and that the PLO should be enabled to establish and maintain premises and adequate functional facilities and that the personnel of the PLO should be enabled to enter and remain in the United States to carry out their official functions. The resolution calls upon the United States to abide by its obligations under the Headquarters Agreement and to provide assurances that no action will be taken that would infringe upon the current arrangements for the official functions of the Permanent Observer Mission of the PLO to the United Nations in New York. A copy of the full text of the resolution is attached for ease of reference.

The General Assembly has also requested that I continue my efforts to resolve this matter in pursuance of the provisions of the Headquarters Agreement, in particular Section 21 thereof, and to report without delay on the outcome of these efforts. I interpret this request to mean that I should for the present continue to seek to exhaust the remedies available under Section 21. In this connection, I would observe that I have not received an official response to my letters to you of 14 January 1988 and 2 February 1988 in which I sought assurances regarding the non-application or the deferral of the application of the Anti-Terrorism Act of 1987 to the PLO Observer Mission nor has the United Nations received a response to the Legal Counsel's letter of 11 February 1988 addressed to the State Department Legal Adviser regarding the choice of an arbitrator by the United States.

I have taken note of the statement made by Ambassador Okun of the United States in the General Assembly at the close of the resumed session to the effect

that the United States Government will consider carefully the views expressed during the session and that it remains the intention of the United States Government to find an appropriate resolution of this problem in light of the Charter of the United Nations, the Headquarters Agreement, and the laws of the United States.

As I indicated in my statement to the General Assembly at the opening of the resumed session it is my hope that it will still prove possible for the United States to reconcile its domestic legislation with its international obligations. Should this not be the case then I trust that the United States will recognize the existence of a dispute and agree to the utilization of the dispute settlement procedure provided for in Section 21 of the Headquarters Agreement, and that in the interim period the *status quo* will be maintained.

D. Materials relating to United States Legislation

(38) Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Title X, Anti-Terrorism Act of 1987

(Public Law 100-204 [H.R. 1777], 22 December 1987) (*United States Code Congressional and Administrative News, 100th Congress — First Session*, No. 12, February 1988, 101 Stat. 1331, 1334 and 1406-1407)

FOR LEGISLATIVE HISTORY OF ACT SEE REPORT FOR P.L. 100-204 IN U.S.C.C. AND A.N. LEGISLATIVE HISTORY SECTION

An Act to authorize appropriations for fiscal years 1988 and 1989 for the Department of State, the United States Information Agency, the Voice of America, the Board for International Broadcasting, and for the other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS

(a) Short Title. — This Act may be cited as the "Foreign Relations Authorization Act, Fiscal Years 1988 and 1989".

(b) Table of Contents. — The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

Title I — the Department of State

Part A — Authorization of Appropriations; Allocations of Funds; Restrictions

Sec. 101. Administration of Foreign Affairs.
Sec. 102. Contributions to International Organizations and Conferences; International Peacekeeping Activities.
Sec. 103. International Commissions.
Sec. 104. Migration and refugee assistance.
Sec. 105. Other programs.
Sec. 106. Reduction in earmarks if appropriations are less than authorizations.
Sec. 107. Transfer of funds.

Sec. 108. Compliance with Presidential-Congressional summit agreement on deficit reduction.
Sec. 109. Prohibition on use of funds for political purposes.
Sec. 110. Latin American and Caribbean data bases.

Part B — Department of State Authorities and Activities; Foreign Missions

Sec. 121. Reprogramming of funds appropriated for the Department of State.
Sec. 122. Consular and diplomatic posts abroad.
Sec. 123. Closing of diplomatic and consular posts in Antigua and Barbuda.
Sec. 124. Report on expenditures made from appropriation for emergencies in the diplomatic and consular service.
Sec. 125. Requirements applicable to gifts used for representational purposes.
Sec. 126. Protection of historic and artistic furnishings of reception areas of the Department of State building.
Sec. 127. Inclusion of coercive population control information in annual human rights report.
Sec. 128. Limitation on the use of a foreign mission in a manner incompatible with its status as a foreign mission.
Sec. 129. Allocation of shared costs at missions abroad.
Sec. 130. Prohibition on the use of funds for facilities in Israel, Jerusalem, or the West Bank.
Sec. 131. Purchasing and leasing of residences.
Sec. 132. Prohibition on acquisition of house for Secretary of State.
Sec. 133. United States Department of State freedom of expression.
Sec. 134. Repeal of Office of Policy and Program Review.
Sec. 135. Studies and planning for a consolidated training facility for the Foreign Service Institute.
Sec. 136. Restriction on supervision of Government employees by chiefs of mission.
Sec. 137. Study and report concerning the status of individuals with diplomatic immunity in the United States.
Sec. 138. Federal jurisdiction of direct actions against insurers of diplomatic agents.
Sec. 139. Enforcement of Case-Zablocki Act requirements.

. . . . . .

Sec. 1001. Short title.
Sec. 1002. Findings; determinations.
Sec. 1003. Prohibitions regarding the PLO.
Sec. 1004. Enforcement.
Sec. 1005. Effective date.

. . . . . .

Title X — Anti-Terrorism Act of 1987

Sec. 1001. Short Title

This title may be cited as the "Anti-Terrorism Act of 1987".

Sec. 1002. Findings; Determinations

(a) Findings. — The Congress finds that —

(1) Middle East terrorism accounted for 60 percent of total international terrorism 1985 ;

(2) the Palestine Liberation Organization (hereafter in this title referred to as the "PLO") was directly responsible for the murder of an American citizen on the *Achille Lauro* cruise liner in 1985, and a member of the PLO's Executive Committee is under indictment in the United States for the murder of that American citizen;

(3) the head of the PLO has been implicated in the murder of a United States Ambassador overseas;

(4) the PLO and its constituent groups have taken credit for, and been implicated in, the murders of dozens of American citizens abroad;

(5) the PLO covenant specifically states that "armed struggle is the only way to liberate Palestine, thus it is an overall strategy, not merely a tactical phase";

(6) the PLO rededicated itself to the "continuing struggle in all its armed forms" at the Palestine National Council meeting in April 1987; and

(7) the Attorney General has stated that "various elements of the Palestine Liberation Organization and its allies and affiliates are in the thick of international terror".

(b) Determinations. — Therefore, the Congress determines that the PLO and its affiliates are a terrorist organization and a threat to the interests of the United States, its allies, and to international law and should not benefit from operating in the United States.

Sec. 1003. Prohibitions regarding the PLO

It shall be unlawful, if the purpose be to further the interests of the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof, on or after the effective date of this title —

(1) to receive anything of value except informational material from the PLO or any of its constituent groups, any successor thereto, or any agents thereof;

(2) to expend funds from the PLO or any of its constituent groups, any successor thereto, or any agents thereof; or

(3) notwithstanding any provision of law to the contrary, to establish or maintain an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof.

Sec. 1004. Enforcement

(a) Attorney General. — The Attorney General shall take the necessary steps and institute the necessary legal action to effectuate the policies and provisions of this title.

(b) Relief. — Any district court of the United States for a district in which a violation of this title occurs shall have authority, upon petition of relief by the Attorney General, to grant injunctive and such other equitable relief as it shall deem necessary to enforce the provisions of this title.

Sec. 1005. Effective Date

(a) Effective Date. — Provisions of this title shall take effect 90 days after the date of enactment of this Act.

(b) Termination. — The provisions of this title shall cease to have effect if the President certifies in writing to the President *pro tempore* of the Senate and the

Speaker of the House that the Palestine Liberation Organization, its agents, or constituent groups thereof no longer practice or support terrorist actions anywhere in the world.

Legislative History

(39) Introduction of a Bill to Provide Penalties for Aiding the PLO (*Congressional Record*, Vol. 133, No. 67, 29 April 1987, pp. E 1635-E 1636)[1]

Introduction of H.R. 2211, a Bill to Providing Penalties for Aiding the PLO

HON. JACK KEMP OF NEW YORK IN THE HOUSE OF REPRESENTATIVES

Mr. Kemp. Mr. Speaker, I am introducing legislation that would make it a felony for anyone to provide funds or services to the Palestine Liberation Organization.

The purpose of my bill is to establish unequivocal statutory authority to shut down PLO operations in the United States.

The United States has accorded the PLO every opportunity and incentive to moderate its views and its actions. Unfortunately, recent events have reaffirmed the extremism of the PLO and its adherence to terrorism.

At the meeting in Algiers — April 20-26, 1987 — of the Palestinian National Council [PNC], Mohammed "Abu" Abbas, convicted mastermind of the *Achille Lauro* hijacking, was reelected to the executive committee of the PLO. So much for Yasser Arafat's earlier pledge to punish those responsible for that despicable, cowardly act.

The PLO also abandoned its accord with Jordan's King Hussein, and agreed to curtail ties with Egypt because of Egypt's relations with Israel. In retaliation, Egypt closed all PLO offices on its territory. The United States should do no less.

By closing the PLO office, the United States has the opportunity to reaffirm its commitment to the PLO-repudiated peace efforts of Arab moderates such as King Hussein and President Mubarak. It will send a message to the PLO that the United States supports a peaceful resolution to the Arab-Israeli conflict, and rejects terrorists as inadmissible parties to negotiation.

And by making it a criminal offense to support PLO actions, we will be declaring our intolerance of any who would offer aid and comfort to international terrorism.

Mr. Speaker, a year ago tomorrow I published an article in the *Washington Times*, arguing that our legal arsenal should be brought to bear against PLO terrorist actions. As I said then:

> "Our American tradition is grounded in the rule of law. We accept as an article of faith that no person is above the law. It is time that Yasser Arafat and other sponsors of international terror come to understand that crimes against the United States, our citizens, or our property, will not go unpunished."

Mr. Speaker, I would also like to share with my colleagues the exchange of correspondence I have had with Secretary of State George Shultz since that time, urging him to use existing authority to shut down the PLO offices here and in New York. The only response I have received to date asserts that such action is outside the Executive's power. I remain unconvinced that present law does not provide

[1] This bill was not enacted into law.

ample basis to end PLO activities in the United States. But at a minimum, my bill should clear up that ambiguity.

The letters follow:

House of Representatives;
Washington, DC, October 16, 1986.

Hon. George Shultz,
Secretary of State,
Department of State,
Washington, DC.

Dear Mr. Secretary: Today, a PLO sponsored terrorist attack occurred near the Wailing Wall in the Old City of Jerusalem, killing at least one person and seriously injuring scores of others including innocent civilians.

The PLO now threatens — not for the first time — that more attacks will follow.

Mr. Secretary, for too long the United States has allowed the PLO to maintain an office in Washington, D.C., and we have tolerated the presence of a PLO U.N. mission in New York. We have the legal authority, as a matter of policy, to shut down these terrorist outposts on U.S. soil. I believe it is past time for us to do so.

The PLO is a terrorist organization. Terrorists are not welcome in the United States — nor should they be welcome in any country that values human decency and human lives. I urge you to use the authority of your office to take the necessary steps to close the PLO office and mission in the US, and to expel foreign PLO operatives now in the United States.

If we fail to take these minimal steps, the PLO Leadership may be tempted to conclude — incorrectly — that they can conduct terrorist operations with impunity. Your swift action can help demonstrate that the PLO will pay a price for its acts of terror.

Sincerely,

Jack KEMP,
Member of Congress.

The Secretary of State,
Washington, D.C.

Hon. Jack Kemp,
House of Representatives, Washington, D.C.

Dear Jack: I am responding to your letter of October 16, concerning the Palestine Liberation Organization Information Office in Washington and the PLO Observer Mission in the UN in New York.

Like all Americans, I was outraged by the recent bombing near the Wailing Wall in Jerusalem, which claimed the life of an Israeli soldier. I join you in condemning this reprehensible and cowardly attack.

I share your deep concern about the claims of responsibility by elements of the PLO for this attack. However, the continued existence of the PLO Information Office in Washington neither reflects nor requires the approval of the United States Government. The PLO Information office is registered under the Foreign

Agents Registration Act of 1938, as amended, with the Department of Justice and is subject to the provisions of that legislation. The Department of Justice has informed us that so long as that office regularly files reports with the Department of Justice on its activities as an agent of a foreign organization, complies with all other relevant US laws, and is staffed by Americans or legal resident aliens, it is entitled to operate under the protection provided by the First Amendment of the Constitution.

The PLO Observer Mission in New York was established as a consequence of General Assembly resolution 3237 (XXIX) of November 22, 1974, which invited the PLO to participate as an observer in the sessions and work at the General Assembly. The PLO Observer Mission represents the PLO in the UN ; it is in no sense accredited to the US. The US has made clear that PLO Observer Mission personnel are present in the United States solely in their capacity as "invitees" of the United Nations within the meaning of the Headquarters Agreement. While we therefore are under an obligation to permit PLO Observer Mission personnel to enter and remain in the United States to carry out their official functions at UN headquarters, we retain the right to deny entry to, or expel, any individual PLO representative directly implicated in terrorist acts. It is, moreover, the policy of the US to restrict the travel of members of the PLO Observer Mission to within a 25-mile radius of Columbus Circle. Special permission must be received to travel beyond this area. Such permission is granted only for humanitarian purposes.

Sincerely yours,

George P. SHULTZ.

House of Representatives
Washington, DC, January 13, 1987.

Hon. George Shultz,
Secretary of State,
Department of State,
Washington, DC.

Dear Mr. Secretary: On October 16 of last year; when PLO terrorists attacked and killed innocent civilians in the Old City of Jerusalem, I wrote to urge that you use the authority of your office to close the PLO Office and mission in the US and to expel foreign PLO operatives now in the United States. In response, I received your letter of November 12, in which you discuss the legal and policy implications of the PLO presence in the United States, but indicate no interest in following through on my suggestion. I enclose copies of this past correspondence for your reference.

Your letter raises a number of questions, which I would like to pose in the interest of furthering a realistic policy toward the PLO.

First, you indicate that "the continued existence of the PLO Information Office in Washington neither reflects nor requires the approval of the United States government". Yet doesn't the continued existence of the PLO Information Office imply that the US government condones its existence, since the government could order the closure of that office?

Second, you say that the Department of Justice has said that "so long as the [PLO Information] office regularly files reports with the Department of Justice on its activities as an agent of a foreign organization, complies with all other relevant

US laws, and is staffed by Americans or legal resident aliens, it is entitled to operate under the protection provided by the First Amendment of the Constitution."

Does the PLO Information office "regularly" file reports with the Department of Justice? How frequently? Would more frequent reporting requirements be beneficial?

Does the PLO file full reports on its activities? Should the PLO — a known terrorist organization — be required to file more detailed reports?

Does the PLO in fact comply with all other relevant US laws? What about the Voorhis Act (US Code Title 18, Sec. 2386), which requires organizations to register separately with the Attorney General if they are subject to "foreign control" and engage in "civilian military activity"?

It is my understanding that registration under the Voorhis Act would require, among other things, "a detailed statement of the assets of the organization, and of each branch, chapter and affiliate of the organization, the manner in which such assets were acquired . . . ; a detailed description of the activities of the organization, and of each chapter, branch, and affiliate of the organization, identified by the manufacturer's number thereon." Wouldn't such information be of use to us in governing the PLO's presence in the US?

As I read the "RICO" (Racketeer Influenced Corrupt Organization) Act, under US law no individual may belong to any organization that engages in terrorism, which is to say murder, etc. — as the PLO clearly does. Doesn't this legislation give the US government a basis upon which to close down PLO operations in the US?

Your letter notes that "[t]he PLO Observer Mission in New York was established as a consequence of General Assembly Resolution 3237 (XXIX) of November 22, 1974, which invited the PLO to participate as an observer in the sessions and work at the General Assembly". But isn't that resolution illegal by the UN's own Charter, which in Article 2 forbids the threat or use of force against the territorial integrity or political independence of any state — which the PLO clearly does?

You also say that "PLO Observer Mission personnel are present in the United States solely in their capacity as 'invitees' of the United Nations", but isn't their stay now numbering ten years stretching that invitation a bit? Shouldn't our "invitation" be limited to specific meetings, perhaps even for the entire duration of the General Assembly, rather than entertaining a year round PLO presence in Manhattan?

You note that "we are under an obligation to permit PLO Observer Mission personnel to enter and remain in the US" — but surely we can put reasonable limits on their stay here?

Your letter notes that special permission must be received by PLO Mission employees to travel beyond the 25-mile radius. I wonder if you could tell me what travel the PLO Mission staff has been engaging in for the past two years — and what grounds the US has given for permitting it?

As a general observation, I am sure that you would agree with me that — as part of the President's policy against terrorism — we should do all we can do to impede the work of terrorist organizations. In this light, do you believe — as a matter of policy — that we should continue to welcome the PLO into the United States? If not, I would urge you to help bring an end to its presence here.

Sincerely,

Jack KEMP,
Member of Congress.

(40) Introduction of a Proposed "Anti-Terrorism Act of 1987" in the Form of a Bill in the United States Senate

(*Congressional Record*, Vol. 133, No. 78, 14 May 1987, pp. S 6447-S 6451)[1]

Anti-Terrorism Act

By Mr. Grassley (for himself, Mr. Lautenberg, Mr. Dole, Mr. Metzenbaum, Mr. Boschwitz, Ms. Mikulski, Mr. Symms, Mr. McCain, Mr. D'Amato, Mr. Murkowski, Mr. Karnes, Mr. Packwood, Mr. Specter, Mr. Hecht, Mr. DeConcini, Mr. Helms, Mr. Simon, Mr. Chiles, Mr. Dixon, Mr. Levin, Mr. Trible, Mr. Graham, and Mr. Gramm:

S. 1203. A bill to amend title 22, United States Code, to make unlawful the establishment or maintenance within the United States of an office of the Palestine Liberation Organization, and for other purposes; to the Committee on Foreign Relations.

Mr. Grassley. Mr. President, today we are taking action long overdue — an action which is designed to put a stop to PLO activity in this country.

It might come as a surprise to many Americans that the PLO has operated freely, in an official capacity, in this country since 1978. Well, those days are past.

The action we are taking today is not because of one so-called isolated incident of terrorist activity but because of the years of documented evidence that leaves one with no doubt about the PLO's goals and what its methods are to achieve those goals.

Let us go down the list of casualties that have directly resulted from the PLO's, in Arafat's words, "armed struggle to liberate Palestine".

First. Who can forget the 1972 Black September massacre of 11 Olympic athletes — an American was among those killed.

Second. The 1973 murder of a 16-year-old American.

Third. The 1974 downing of a TWA 707 which resulted in the death of 88 people, some of whom were American.

Fourth. The 1975 bombings in Jerusalem which resulted in the death of three Americans.

Fifth. The 1976 hotel fire set by the PLO which caused the death of two Americans.

Sixth. The 1976 killing of an aide to Senator Jacob Javits.

Seventh. The 1978 killings of American Medical Student and an American photographer.

Eighth. And that brings us to the present day where we have experienced the massacres at the Rome and Athens airports, and the murder of Leon Klinghoffer aboard the *Achille Lauro*.

These instances have two things in common: Americans have been killed and the PLO has taken direct credit for the murders, or those held accountable in the courts have been members of the PLO.

Because of time, I have not gone into the evidence of other crimes carried out by the PLO such as Narcotics trafficking, kidnapping, fraud, smuggling, or murders carried out against non-US citizens, not to mention the maiming of countless numbers of others, including Americans.

This is the organization which promotes its goals with the above action. How long will it take us to come to the decision that the PLO has no business operating in the United States, let alone in the rest of the world.

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[1] See document 46 below.

Egypt, Morocco, and Jordan have recently ordered PLO offices closed. I hate to admit that it is time we take our lead from certain Arab nations in the Middle East in dealing with terrorists on our own shores and shut down the PLO operation in the United States.

Mr. President, this is cosponsored by Senators Lautenberg, Dole, Metzenbaum, Boschwitz, Mikulski, Symms, McCain, D'Amato, Murkowski, Karnes, Packwood, Specter, Hecht, DeConcini, Helms, Simon, Chiles, Dixon, Levin, Trible, Graham, and Gramm.

I ask unanimous consent to have the bill printed in the *Record*.

The Presiding Officer (Mr. Shelby). The bill will be received and appropriately referred, and the bill will be printed in the *Record*, without objection.

The bill follows:

S. 1203

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SHORT TITLE

Section 1. This Act may be cited as the "Anti-Terrorism Act of 1987".

FINDINGS ; DETERMINATIONS

Section 2 *(a)*. The Congress finds that —

(1) Middle East terrorism accounted for 60 percent of total international terrorism in 1985;

(2) the Palestine Liberation Organization (hereafter in the Act referred to as the "PLO") was directly responsible for the murder of an American citizen on the *Achille Lauro* cruise liner in 1985, and a member of the PLO's Executive Committee is under indictment in the United States for the murder of that American citizen; (3) the head of the PLO has been implicated in the murder of a United States Ambassador overseas;

(4) the PLO and its constituent groups have taken credit for, and been implicated in, the murders of dozens of American citizens abroad;

(5) the PLO covenant specifically states that "armed struggle is the only way to liberate Palestine. Thus it is an overall strategy, not merely a tactical phase";

(6) the PLO rededicated itself to the "continuing struggle in all its armed forms" at the Palestine National Council meeting in April 1987; and

(7) the Attorney General has stated that "various elements of the Palestine Liberation Organization and its allies and affiliates are in the thick of international terror".

(b) Therefore, the Congress determines that the PLO and its affiliates are a terrorist organization and a threat to the interests of the United States, its allies, and to international law and should not benefit from operating in the United States.

PROHIBITIONS REGARDING THE PLO

Section 3. It shall be unlawful, if the purpose be to further the interests of the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof, on or after the effective date of this Act —

(1) to receive anything of value except informational material from the PLO or any of its constituent groups, any successor thereto, or any agents thereof;

(2) to expend funds from the PLO or any of its constituent groups, any successor thereto, or any agents thereof; or

(3) not withstanding any provision of the law to the contrary, to establish or maintain an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof.

ENFORCEMENT

Section 4 *(a)*. The Attorney General shall take the necessary steps and institute the necessary legal action to effectuate the policies and provisions of this section.

(b) Any district court of the United States for a district in which a violation of this Act occurs shall have authority, upon petition of relief by the Attorney General, to grant injunctive and such other equitable relief as it shall deem necessary to enforce the provisions of this Act.

EFFECTIVE DATE

Section 5 *(a)*. Provisions of this Act shall take effect, 90 days after the date of enactment of this Act.

(b) The provisions of this Act shall cease to have effect if the President certifies in writing to the President *pro tempore* of the Senate and the Speaker of the House that the Palestine Liberation Organization, its agents, or constituent groups thereof no longer practice or support terrorist actions anywhere in the world.

The Presiding Officer. The Republican leader is recognized.

Mr. Dole. Mr. President, I thank the distinguished Presiding Officer.

I thank my friend from Iowa for his leadership in this effort.

CLOSE DOWN PLO OFFICES

I am pleased to join with Senator Grassley, and a list of other distinguished cosponsors today, in introducing legislation to close down the two offices of the Palestine Liberation Organization, the PLO, here in the United States.

One of the PLO offices is here in Washington — a so-called information office. The other office is in New York — the office of the PLO observer mission to the United Nations.

Neither of those offices belong in this country. It's high time they were shut down.

PLO IS TERRORIST ORGANIZATION

The PLO is a terrorist organization. Its leaders are terrorists.

The organization was directly responsible for the *Achille Lauro* cruise ship hijacking, and the murder of an American citizen passenger on that ship. A member of the organization's executive committee is under indictment for that murder.

The head of the PLO has been implicated in the murder of an American Ambassador.

The PLO has proudly boasted of its role in planning, carrying out and supporting terrorist acts around the world.

And within the past week, a PLO member was arrested in New York, charged with involvement in the terrorist bombing of a bus in Israel — an attack in which one person was killed.

And now I read in yesterday's paper that Abu Nidal — about as notorious a terrorist as exists in the world today, and long associated with the PLO — is threatening retaliation against this country, if we extradite the arrested person.

So the PLO has not changed its stripes. The State Department has confirmed this. The Justice Department has confirmed this. The evidence is written in the blood of Americans, Israelis and people of many nationalities around the globe.

This organization, and its personnel, have no place in America; they have no place in civilized society. It's time they were banished.

ADMINISTRATION HAS NOT MOVED

I had hoped the administration would take the lead in this effort. I personally asked the State Department to look into the possibilities of closing these offices under existing law. I'm still not sure that new law is really needed.

But the executive has not yet moved; and has not given a clear indication of its intention to move under current law.

To underscore that point, I would like to include in the record at this point an exchange of communications I have had with Secretary Shultz on the question of the PLO offices.

So we are introducing this legislation to provide a clear legal base — and a clear congressional direction and mandate — to move against these two offices.

CONSTITUTIONAL CHALLENGE INVALID

Some may try to raise a constitutional challenge to this bill. It is not a valid challenge.

We are not seeking to prevent the consideration of political views; but we are seeking to protect our country against terrorism.

We are not seeking to undermine anyone's rights — neither the rights of any Americans, nor the rights of anyone anywhere else in the world; but we are trying to protect the right of the citizens of this country to be free from the threat of terrorism.

We are not seeking to weaken the protections of the first amendment; but we are seeking to strengthen the defenses of this country against the real, physical threat that the PLO represents. A threat whose immediacy was underscored by the arrest made last week.

PROVISIONS OF BILL

The bill finds that the PLO is a terrorist organization, and lays out the outlines of the evidence to support that finding.

On the basis of that finding, and the right of this country to protect itself and its citizens from terrorism — it prohibits the receipt or expenditure of any funds from the PLO in this country; and prohibits the establishment or maintenance of any PLO office in the United States.

And to make clear that these prohibitions are in place because — and only

because — the PLO is a terrorist organization: The bill would lift the prohibitions once the President certifies that the PLO is no longer practicing or supporting terrorism.

PLO UN OFFICE HAS NO SPECIAL STATUS

Let me make two final points. One, some may question whether the fact that the PLO's New York office is affiliated with the United Nations — an observer office of the United Nations — limits our right to close it down. The answer is, no. In our agreement with the United Nations, we have reserved our right to defend ourselves; to take any actions necessitated by our national security; and to see that our national laws are fully observed.

We have claimed and exercised these rights time and time again. All we are doing here, in this bill, is claiming and exercising those rights again — and for the clear and compelling reason that the office is one part of the PLO's global, terrorist network.

And the other point is: In taking this step, we would only be following the lead of three moderate Arab States — Jordan, Morocco, Egypt — that have already moved to close the PLO's office. Those are nations — especially Jordan — that are right in the middle of the peace process. They see the closing of these offices as a necessary adjunct to advancing that process. I agree with them.

TERRORISM IS THE ISSUE

So the Constitution is not at issue; the United Nations is not at issue; the Middle East peace process is not at issue.

Terrorism is the issue. The right of this country to defend itself against terrorism is the principle on which we seek legislative action — and the reason we introduce this legislation today.

So I just suggest that this is an issue that should be addressed. I thank again the distinguished Senator from Iowa who started this effort almost a year ago, and my colleagues on both sides of the aisle.

I ask unanimous consent to print in the *Record* the two letters I addressed to the Secretary of State and to the President.

There being no objection, the material was ordered to be printed in the *Record*, as follows:

US Senate
Washington, DC, February 6, 1987.

Hon. George P. Shultz
Secretary of State,
Department of State,
Washington, DC.

Dear Mr. Secretary: Thank you for your letter of January 29, 1987, responding to my earlier telegram on the status of offices of the Palestine Liberation Organization (PLO) in the United States.

While I understand the points you make, I am concerned about your response on two counts.

First, I wonder whether the Administration has explored thoroughly all of the options under existing law, and consistent with our obligations as host to the United Nations (UN), to move against these PLO offices. In order to help me in evaluating that question, I would appreciate a detailed report on how the PLO office in Washington has responded to the requirements of the Foreign Agents

Registration Act. I would also ask for an authoritative Administration position, with explanation, of whether that PLO office might not be subject to the requirements of the Voorhis Act and the Racketeer Influence Corrupt Organization Act (RICO). Finally, I request a similarly detailed report on whether and how the activities of the PLO office in New York comport with its status as a UN "observer mission". In particular, I would ask that the latter report address how the Administration is implementing our obligations to provide the PLO a permanent New York office (as opposed to a temporary office, during the periods when the UN is in session); to permit PLO representatives to remain in the United States even when the UN is not in session; and to permit PLO representatives travel outside of 25 miles from the UN.

Second, I believe it is also in the Administration's interest to explore — with me and other concerned Members of Congress — the question of whether new legal tools are needed to monitor, regulate and perhaps even close these PLO offices. While I strongly oppose and would not be party to the violation of anyone's rights, I am not satisfied to simply throw up my hands and say that nothing can be done about the fact that a known terrorist organization can maintain open and active offices in the United States.

I would appreciate your earliest consideration of these matters, and I look forward to working cooperatively with you and others in the Administration to address the concerns I have raised.

Sincerely yours,

Bob Dole,
US Senate.

The Secretary of State,
Washington, DC, January 29, 1987

Hon. Robert J. Dole,
US Senate,
Washington, DC.

Dear Senator Dole: I apologize for the delay in responding to a telegram which you and nine of your colleagues sent to the President concerning the Palestine Liberation Organization Information Office in Washington and the PLO Observer Mission in the UN in New York.

Like all Americans, I was outraged by the bombing near the Wailing Wall in Jerusalem, which claimed the life of an Israeli soldier. I join you in condemning this reprehensible and cowardly attack.

I share your deep concern about the claims of responsibility by elements of the PLO for this attack. However, the continued existence of the PLO Information Office in Washington neither reflects nor requires the approval of the United States Government. The PLO Information Office is registered under the Foreign Agents Registration Act of 1938, as amended, with the Department of Justice and is subject to the provisions of that legislation. The Department of Justice has informed us that so long as that office regularly files reports with the Department of Justice on its activities as an agent of a foreign organization, complies with all other relevant US laws, and is staffed by Americans or legal resident aliens, it is entitled to operate under the protection provided by the First Amendment of the Constitution.

The PLO Observer Mission in New York was established as a consequence of General Assembly resolution 3237 (XXIX) of November 22, 1974, which invited the PLO to participate as an observer in the sessions and work at the General Assembly. The PLO Observer Mission represents the PLO in the UN; it is in no sense accredited to the US. The US has made clear that PLO Observer Mission personnel are present in the United States solely in their capacity as "invitees" of the United Nations within the meaning of the Headquarters Agreement. While we therefore are under an obligation to permit PLO Observer Mission Personnel to enter and remain in the United States to carry out their official functions at UN headquarters, we retain the right to deny entry to, or expel, any individual PLO representative directly implicated in terrorist acts. It is, moreover, the policy of the US to restrict the travel of members of the PLO Observer Mission to within a 25-mile radius of Columbus Circle. Special permission must be received to travel beyond this area. Such permission is granted only for humanitarian purposes

Sincerely yours,

George P. SHULTZ.

US Senate
Committee on the Judiciary,
Washington, DC, Oct. 17, 1986.

Dear Mr. President: The Palestine Liberation Organization has publicly taken responsibility for the attack on Israeli soldiers and their families this week near the Western Wall in Jerusalem, and has vowed to step up such terrorist attacks. This is just the latest of a multitude of violent acts of terrorism by this outlaw organization.

You have been a leader in the fight against terrorism and condemning the PLO's long-established policy of bombings, kidnappings, hijacking, extortion and murder. Accordingly, we call upon you today to use every available legal option to order the closing of the PLO office in Washington, DC. That office, according to its own registration statements filed with the Department of Justice, receives $250,000 a year from its parent body, the head of the terrorism empire. We are outraged that an organization whose mandate is terror is allowed to operate freely in our nation's capital.

(Signed) Senators Grassley, Dole, Kasten, McConnell, Specter, D'Amato, Laxalt, Pressler, Heinz, Quayle.

Mr. D'Amato. Mr. President, I rise to cosponsor legislation introduced by my good friend, the distinguished senior Senator from Iowa. This legislation, the Anti-Terrorism Act of 1987, will effectively close the Palestine Liberation Organization [PLO] offices in the United States.

The act recognizes officially what we have all known for some time; that the PLO and its affiliates are a terrorist organization and a threat to the interests of the United States, its allies, and international law. This bill will close the New York City and the Washington, DC, offices of the PLO. It also makes it illegal to accept anything of value from the PLO and to expend funds from the PLO. Because the PLO is not afforded diplomatic immunity in the United States, this

legislation does not violate any treaties or other international rules regarding the treatment of diplomatic missions or their personnel.

Mr. President, this bill is long overdue. For some time, many of us in Congress have pushed for the closing of the PLO offices in this Nation. In October of last year, several colleagues and I sent a telegram to the President urging that steps be taken to close the PLO office here in Washington. The continued presence of the PLO in the United States is convoluted policy. The PLO is not only a documented terrorist organization which consistently renounces any peaceful solution in the Mideast, but is also a sworn enemy of the United States.

That enmity toward America is well established. Since 1972, a tragic number of American citizens have been victims of PLO terrorism. From the 1974 downing of a TWA jetliner to the senseless murder of Leon Klinghoffer aboard the *Achille Lauro*, the bloody hands of the PLO have consistently targeted innocent US citizens. Over 50 Members of this body last year cosigned a letter to the Attorney General urging the Department of Justice to act upon information linking PLO leader Yasser Arafat to the brutal 1973 murders of American Ambassador Cleo Noel and G. Curtis Moore in Sudan.

Mr. President, this legislation will not stop PLO terrorism against Americans. It will, however, send a clear and unmistakable signal to PLO leaders that the United States will not accept the presence of terrorists in this Nation. How can we allow an organization inimical to the very principles of our Nation to enjoy legitimacy associated with the establishment of offices on our soil. We do not allow missions in the United States from the Red brigade, the Red army faction, direct action, M-19, the Shining Path, or other equally heinous terrorist groups. The PLO, however, is afforded this luxury.

Some might argue that the PLO, as self-declared representative of the Palestinian people, has some quasiofficial status, deserving an official presence in the United States. Mr. President, six years ago this month we unceremoniously expelled the Libyans for their support for terrorist activities. Even many Arab nations — Jordan, Morocco, and Egypt — have closed the doors of PLO offices in their respective nations. Why, then, do we allow the PLO to remain? It is a diplomatic charade of no value. Mr. President, we only look foolish.

I strongly urge my colleagues to join me in cosponsoring this important legislation.

Thank you, Mr. President.

Mr. Lautenberg. Mr. President, I join Senators Grassley, Dole, Metzenbaum, Symms, and others in introducing legislation to close down the PLO office in Washington, DC, and the PLO Observer Mission in the United Nations. This legislation also makes it illegal to receive anything of value except informational material from the PLO or its agents in furtherance of the PLO's purposes, or to spend money from the PLO or its agents to further those purposes.

Mr. President, I have long advocated the closing of the PLO office in Washington and the observer mission in New York, both in testimony before the Senate Judiciary Subcommittee on Terrorism last year, and in questioning various witnesses before the Senate Budget and Appropriations Committees on which I sit. I have repeatedly urged the Attorney General and Secretary Shultz to investigate how this could be done.

Last year, I authored a provision in the Commerce-State-Justice appropriations bill to require that the Department of Justice investigate whether the PLO office in Washington was in compliance with the Foreign Agents Registration Act. The report I received says that the PLO is in violation of that act.

Mr. President, today we are introducing a bill that will finally close these offices. This bill hangs a sign on America's doors that says, "Terrorists not welcome

here". And well it should. The time is long past when our country should hold out a welcome mat for the PLO, whose record of hijackings, murder, and kidnappings is well-known and well-documented. Instead, we should pull the rug out from under an organization who so clearly embodies, in rhetoric and in action, the word terrorism.

Yasser Arafat, the head of the PLO, has long been recognized by this administration as a prime culprit in terrorist crimes. On 8 April 1986, Attorney General Meese declared:

> "We know that various elements of the PLO and its allies and affiliates are in the thick of international terror. And the leader of the PLO, Yasser Arafat, must ultimately be held responsible for their actions."

In referring to the fight against terror, Meese stated — "you don't make real progress until you close in on the kingpin".

Moreover, the PLO has been implicated in the murder of US diplomats overseas, and has proudly taken credit for the murders of dozens of American citizens abroad. The PLO national charter states that "armed struggle is the only way to liberate Palestine", demonstrating that the dedication to violence is not a mere passing fancy but a well-thought-out strategy to achieve its goals.

Nor has the tiger shown any indication of changing its stripes of late. The recent Palestine National Council [PNC] meeting in Algiers made clear that the PLO has once again said no to peace and yes to terror. At that meeting, the PLO rededicated itself to "armed struggle", its code word for terror, in all forms. It pledged its continued rejection of the Security Council Resolution 242 and the Camp David accords.

This was not mere rhetoric. At the outset of the conference, Arafat's Fatah faction dispatched three infiltrators across the Lebanese frontier to attack Israeli border settlements. The PLO also pledged to seek better relations with Syria on the basis of the struggle for objectives hostile to imperialism and Zionism. It condemned Egypt for its peace treaty with Israel, and cancelled the accord to coordinate peace efforts with Jordan.

Perhaps most revealing, the Palestine National Council reelected Abul Abbas, currently under US indictment for planning and overseeing the hijacking of the *Achille Lauro* and murdering an American, to a leadership position on the PLO's 15-man executive committee.

If there were still any doubters, the meeting in Algiers made clear that the PLO is not interested in peace, only in violence.

In the wake of the PNC meeting in Algiers, both Egypt and Morocco closed the PLO offices in their countries, as Jordan had earlier. Why have we waited so long?

These offices not only legitimize the PLO's policy of terror. There is a real fear that these offices in Washington and New York might be used as bases for terror.

According to an April 13 1986 *New York Times* article, PLO offices in 18 non-Communist countries were put under close scrutiny by European intelligence and security officials to insure they carry out only official functions.

According to that same article, the Director General of the Israeli Foreign Ministry, people attached to PLO offices in Europe were preparing a support structure for terrorist operations. They recruited, rented safehouses, provided identity documents, chose potential targets, and collected operational intelligence.

While all PLO representatives in Europe describe their activities as political, educational, and cultural, Professor Wilkinson of Aberdeen University in Scotland, a specialist in Palestinian movements, says there are several kinds of people employed in PLO offices, and they are all ready to do violence.

With such questions about the PLO offices in Europe, can the PLO office in

Washington or New York be so different? They, too, say their purposes are cultural, educational, and political. But their former head, Hatem Hasseini, is a member of the PLO Executive Committee. We should not take the chance.

If our tough talk on terror means anything, it means we should not allow a terrorist organization to operate freely in our Nation's Capital, or in New York City. For too long, this country has said one thing and done another when it comes to terror. Now is the time to put our money where our mouth is and deny the PLO a forum on our shores for practicing terror.

I urge my colleagues to act swiftly on his legislation.

CLOSING THE US OFFICES OF THE PLO

Mr. Karnes. Mr. President, I rise in support of the legislation introduced by the senior Senator from Iowa and others that would provide the basis for closing the two offices maintained in the United States by the PLO.

Mr. President, the issue put forth by this bill goes beyond just the question of the terrorist actions of the PLO, although that is a critical element of the bill. It concerns whether the United States is tacitly going to extend legitimacy to an organization that by its words and deeds clearly deserves no such legitimacy. Nobody can doubt that the PLO is a terrorist organization. The cruel, execution style murder of Leon Klinghoffer is only the most visible example of the PLO's terrorist activities against the citizens of the United States. The PLO openly supports the use of terrorism. It has used the tactic of terrorism to thwart the attempts to achieve a peaceful, negotiated resolution of the Arab-Israeli conflict. The United States, due to the general policies of the PLO, including its support of terrorism, has refused to extend even the most limited level of recognition to the PLO.

Mr. President, it is this last point that is of greatest concern to this Senator. It is established US policy that the United States will not extend recognition to the PLO and that no US officials will meet with PLO representatives until the organization recognizes Israel's right to exist and renounces terrorism. This longstanding policy has been sound and should continue to be upheld. The presence of the two PLO offices in the country flies in the face of what should be a clear and consistent policy. The presence of the PLO offices in New York and here in Washington are a form of tacit recognition of the PLO as a legitimate international power. As I stated earlier, the PLO clearly does not deserve any such recognition by the United States. I hope that the Senate will take immediate action to clarify our policy of not recognizing the PLO. I urge my colleagues to support the bill introduced by the Senator from Iowa. By enacting this bill, we will give strength and meaning to our sound and established policy about not recognizing an organization that stands for terrorism and stands against the rule of civilized behavior in international relations.

Mr. Chiles. Mr. President, will the Senator yield?

Mr. Dole. I yield.

Mr. Chiles. I want to just join and say I am delighted to see that the Senator from Iowa has introduced this bill. I am a cosponsor of it.

It seems to me that we should not be allowing terrorist organizations to have offices or a safe haven in this country. That has been the policy of the United States. If and when the PLO decided that they wanted to strike that from being their purpose, that would be one thing. We know there are some factions within the PLO.

But I think this is a good bill and I support the Senator.

Mr. Dole. I thank the Senator from Florida not only for his cosponsorship, but for his leadership and cooperation in this legislation.

(41) Explanation of a Proposed "Terrorist Organization Exclusion Act of 1987" in the Form of a Bill in the United States House of Representatives[1]

(*Congressional Record*, Vol. 133, No. 90, 4 June 1987, p. E 3329)

The Terrorist Organization Exclusion Act of 1987

HON. ELTON GALLEGLY OF CALIFORNIA IN THE HOUSE OF REPRESENTATIVES

Mr. Gallegly. Mr. Speaker, today I rise in strong support of HR 2587, the "Terrorist Organization Exclusion Act of 1987". I am an original cosponsor of this legislation because I feel that the United States should take the strongest possible stand against terrorist actions supported by the premier organization of its kind in the world today, the Palestine Liberation Organization.

HR 2587 would accomplish this goal by effectively closing the PLO "observer" mission to the United Nations in New York, and the PLO "information" office in Washington, DC. This legislation would also preclude the opening of any new PLO offices in the United States.

There are essentially three operative provisions to this bill. The bill will: First, prohibit anyone in the United States from receiving anything of value except informational material from the PLO, its agents, constituent groups, or any successor group to the PLO ; second, prohibit the expenditure of any funds in the United States by the PLO or any of its constituent groups, and third, bar the establishment or maintainence of any PLO office, headquarters, or other facility within the jurisdiction of the United States.

The reasons for this bill are obvious. The barbaric practice of terrorism continues to be one of the gravest threats facing the free world. The activities of the PLO in both engaging in terrorist atrocities, and training a wide variety of terrorist operatives, have in large part been responsible for the advent of modern terrorism. In fact, the crime of aircraft hijacking was primarily developed and refined by the PLO.

The PLO has been largely responsible for unleashing a bloody scourge of terrorism on the world, and the United States has been a primary target. In 1983 alone, 274 Americans were killed and 118 injured in terrorist attacks. In 1986, the State Department has reported that 27 percent of all terrorist attacks were targeted at US citizens and property.

The PLO has been directly involved in a large number of terrorist attacks against the United States which has cost the lives of dozens of American citizens. While the complete list of these atrocities is too long to recount here, a few examples are illustrative. In 1973, Cleo Noel, the US Ambassador to the Sudan was assassinated by the PLO Black September group at the order of Yasser Arafat, the chairman of the PLO. In 1985, the PLO planned and executed the hijacking of the *Achille Lauro* ship and the subsequent murder of Leon Klinghoffer, a US citizen. The mastermind of this crime, Abu Abbas, was tried and sentenced in absentia to life imprisonment by the Italian court for his role in the Klinghoffer murder. Incredibly, Abbas currently sits on the executive committee of the PLO. Just a few weeks ago, Mahmoud Ahmad was arrested in New York for his role in a 1986 bombing of an Israeli bus which killed the driver and left three passengers seriously wounded. A PLO terrorist, Abu Nidal, has already threatened to retaliate against the United States if Ahmad is extradited to Israel as is expected.

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[1] This bill was not enacted into law. However, its provisions are similar to those of Title X as finally adopted.

Today, the PLO remains an organization dedicated to the practice of terrorism to further its aims. The United States must take direct action against any organization that espouses terrorism. It is ludicrous to allow the PLO free rein to spread their ideology of hate and violence in our country. The United States has every right to defend its citizens from terrorist attack, and this bill is a step in that direction.

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(42) Statement Made in the United States Senate on 25 June 1987

(*Congressional Record*, Vol. 133, No. 105, 25 June 1987, pp. S 8775-S 8776; *ibid.*, No. 114, 10 July 1987, pp. S 9627-S 9628; *ibid.*, No. 116, 14 July 1987, pp. E 2895-E 2896; and *ibid.*, No. 130, 4 August 1987, pp. E 3248-E 3249)

TERRORISM

Mr. Simon. Mr. President, on May 14 Senator Grassley introduced a bill to curb PLO activity in the United States, S. 1203. I am a cosponsor of that bill and would like to take a few moments to discuss its importance.

Terrorism is a scourge. It strikes at the very basis of society. It attempts to force political and social change through violence. Because terrorism depends on the shock effect of its actions, it strikes at the unsuspecting, the innocent, the defenseless. Terrorist acts, like the indiscriminate attack, on women and children in the Rome and Vienna airports and the brutal cold-blooded murder of Leon Klinghoffer cannot be tolerated.

Unfortunately, we have seen a tremendous increase in terrorism over the past decade. Experts say the problem will get worse because terrorists have found that violence and the threat of violence pay off in dealing with many governments. No one is safe from this threat.

More than half of all terrorist incidents in the world today are Middle East related, and most of those are directed against Europe, the United States and Israel. It is clear that many of these threats have been perpetrated by the PLO, a self-avowed terrorist organization. Its covenant specifically states that "armed struggle is the only way to liberate Palestine", a position that was reaffirmed as recently as this past April at a meeting of the Palestine National Council. Despite hopes among some that the organization would moderate its positions and activities over time, the leopard has not changed its spots. It was and continues to be one of the primary sponsors of terrorism in the Middle East. I don't need to remind you of the numerous Americans among its victims. They range from ambassadors to tourists, young to old, and healthy to those with handicaps.

There is no reason why a terrorist organization should be allowed to operate within the United States and under the protection of our laws. And yet it does operate, both here in Washington and in New York. It's time that we closed these offices. Senator Grassley's bill would provide a clear legal basis and a congressional mandate for doing that.

Some have questioned whether the bill violates free speech. I do not believe it does. The bill specifically excludes informational material from this prohibition. And, there is nothing in S. 1203 which will prohibit Americans from publicly advocating for the PLO. It does prohibit any organization from operating at the behest or direction of the PLO or to receive or spend money from the PLO or its agents.

Taking this stand against terrorism is not in competition with my longstanding

work to revise and repeal those sections of the McCarren-Walter Act which restrict the free speech and exchange of ideas of Americans and foreigners alike.

In the 99th Congress, I joined my former colleague Senator Charles Mathias of Maryland in introducing the International Communication and Travel Act, a bill which would have amended the ideological exclusions in McCarren-Walter and removed restrictions on the import and export of information. I sponsored an amendment prohibiting ideological exclusions on this year's State Department Authorization Act and will be reintroducing a McCarren-Walter reform bill again later this summer. Like those reforms, Senator Grassley's bill, S. 1203, protects the free flow of information. Again, I would like to point out that purely informational materials are not covered by this legislation. In so doing it respects the interests of both the audience and the speaker.

But terrorism is something else. The protection of US law does not extend to the support of terrorists or terrorism. This bill addresses terrorism; McCarren-Walter reform does not. Clearly, the free flow of information and ideas and the restriction of terrorism are not conflicting goals. Both my McCarren-Walter reform and S. 1203 are cognizant of each of these national priorities. Taken together, these reforms will protect Americans' right to free speech and go some way toward offering Americans greater protection against terrorism.

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(43) Statement Made in the United States Senate on 10 July 1987

CLOSING OF PLO OFFICES IN THE UNITED STATES

Mr. Grassley. Mr. President, I come before this body at this time to ask consideration again of more than a majority of my colleagues who have not yet joined in cosponsoring S. 1203, the bill that would bring about the closing of the PLO offices in the United States. I should like to have my colleagues consider the following undisputed facts:

In 1974, a TWA jet was exploded in midair by the Palestine Liberation Organization. Eighty-eight people were killed, including many Americans.

In 1976, an aide to Senator Jacob Javits was murdered by an affiliate of the PLO.

In 1985, PLO terrorists took credit for the massacres in the Rome and Vienna airports.

Later in 1985, PLO guerrillas hijacked the *Achille Lauro* and killed an American passenger, Leon Klinghoffer.

Consider also the following astonishing fact: The PLO — the world's preeminent terrorist organization — has operated two offices within the borders of the United States for the past 10 years. Within the shadow of the White House, the PLO maintains an "information" office. They also maintain a UN "observer mission" in New York. For some time, Members of Congress have questioned the administration policy which permits PLO operations on our soil. Because the administration has not acted, several weeks ago I introduced legislation to shut down the PLO's safe harbor in the United States.

I introduced this legislation because I cannot support the hypocrisy of talking tough about terrorism while playing host to the world kingpins of terror.

PLO offices in Europe have long been used to support terrorist operations. Their European agents recruit, rent safehouses, provide identities and documents, choose potential targets, and collect operational intelligence. The *New York Times*

reported on April 14, 1986, that each PLO mission in Europe has on its staff a "specialist in clandestine operations including terrorism".

Moderate Arab leaders, disgusted with the PLO and its commitment to terror, have responded. President Mubarak of Egypt and King Hassan of Morocco have acted decisively to close the PLO offices on their soil, joining King Hussein of Jordan who did so a year earlier.

Some have suggested that legislation to close the PLO offices violates the free speech guarantee of the first amendment. I disagree. No foreign entity has a constitutional right to operate on our soil. Our Government does not recognize the PLO and has committed itself not to do so until the PLO ends it policy of terror. Moreover, nothing in my bill would restrict the right of anyone in the United States to speak out in support of the PLO. We could not do that constitutionally, nor does this bill do it.

As Professor Robert Friedlander of the Ohio Northern University Pettit College of Law has written, the Palestine Information Office, which derives all of its funding and support from the Palestine Liberation Organization, and is in fact a PLO front, is not protected by the first amendment. The Supreme Court, in *Scales* v. *US*, held that there is

> "no reason why membership when it constitutes a purposeful form of complicity in a group engaging in this same forbidden advocacy, should receive any greater degree of protection from the guarantees of that amendment".

With respect to the New York office in particular, the fact that it is loosely connected with the United Nations does not confer any automatic rights for the PLO nor create any absolute obligations on the United States. The UN Office of Legal Affairs has ruled that

> "Permanent Observer Missions (such as that of the PLO) are not entitled to diplomatic privileges or immunities ... If they are not listed in the United States diplomatic list, whatever facilities they may be given in the United States are merely gestures of courtesy by the United States authorities."

Those who allege that this legislation will hurt the peace process have it exactly backward. Egypt, Jordan, and Morocco have closed the PLO offices in those countries to send a clear message. That message is if the PLO wants to participate in the diplomatic process, the first step must be to renounce terror. It is this, and nothing more or less, that motivates my actions to close the PLO offices in the United States. Thirty-eight Senators have joined me in this effort and I speak this afternoon because I want the rest of my colleagues to consider joining in the cosponsorship of this legislation so that we can be better prepared when it comes to the floor of the Senate and maybe hopefully that the White House, the State Department and Justice will actually close that office in Washington, DC, without the necessity of legislation.

I thank my colleagues and I yield the floor.

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(44) Statement Made in the United States Senate on 14 July 1987

Peace in the Middle East

HON. DAVID E. BONIOR OF MICHIGAN IN THE HOUSE OF REPRESENTATIVES

Mr. Bonior. Mr. Speaker, I wish to clarify my position on a letter to my colleagues that I recently cosigned opposing legislation designed to close the

information offices of the PLO in the United States. The fundamental purpose of this letter was to express concern over legislation that, I believe, would threaten the exercise of free speech in this country and have damaging consequences for our ability to participate in the peace process in the Middle East.

As we all know, Mr. Speaker, the search for peace in the Middle East has been elusive. Deeply held convictions have kept the peoples of this region from fostering mutual understanding. As an important player in the region, the United States needs to hear differing points of view.

My concern that this country not close channels of communications with representatives of the Palestinian people, must not be misconstrued in any way as a lack of support for the State of Israel. Israel is our most important ally in the region. Our Nation's commitment to defend the State of Israel's right to exist and to provide economic and military support must never be questioned.

To underscore this point, I would like to quote from a speech I made to this body last year.

> "Israel will continue to be a nation with special problems and a special relationship to the United States. Because it is surrounded by hostile neighbors, the question of security will be a priority which overshadows all others. America needs to acknowledge this and to continue to provide what we can to ensure the security of our closest ally in the Middle East."

Ultimately, Mr. Speaker, there will be no lasting peace in the Middle East, and no true security for the State of Israel, without a resolution of the Palestinian issue. The questions of a Palestinian homeland and representation for the Palestinian people must be addressed.

It is in this context — the need to search for a lasting peace in the Middle East as well as to protect freedom of speech at home — that I have expressed my opposition to legislation which would deny an organization representing the Palestinian people the opportunity to present its views.

Mr. Speaker, I urge my colleagues to read the following article on this subject.

[From the *Washington Post*, July 12, 1987]

PLAYING PLO POLITICS WITH THE FIRST AMENDMENT

(By Nat Hentoff)

Bringing students to watch Congress at work is chancy. On a good day they might hear Sens. Paul Simon, Howard Metzenbaum, Carl Levin, and Ted Kennedy speak with passionate commitment about the need to protect the Bill of Rights, especially the First Amendment. On a bad day they might hear that the very same senators are cosponsors of a bill that would use the justified abhorrence of the PLO to weaken the First Amendment.

The bill has been introduced in the Senate by Charles Grassley of Iowa, and its House counterpart has been proudly initiated by Jack Kemp of New York. It's called the Anti-Terrorism Act of 1987, and, among other things, it forbids Americans receiving anything of value except informational material, from the Palestine Liberation Organization. What happens to a newspaper that runs an ad after the bill has been passed protesting the law — an ad paid for with PLO money? Does the paper get indicted?

At the core of this bill — crafted to make those who vote against it appear to be soft on terrorism when they're next up for re-election — is a provision that would close the two PLO offices in the United States. No one could establish such an office henceforth "at the behest or direction of, or with

funds provided by the PLO". (There has been an observer mission connected with the United Nations in New York since 1974, and an information office in Washington since 1978.)

In speaking for the bill on the Senate floor, cosponsor Robert Dole noted solemnly, "We are not seeking to undermine anyone's rights — neither the rights of any Americans nor the rights of anyone anywhere else in the world". That's the kind of prologue that gives the First Amendment the shakes. "We are seeking," added the senator, "to strengthen the defenses of this country against the real, physical threat that the PLO represents."

Factions of the PLO have murdered and maimed elsewhere, sometimes with the smiling approval of Yasser Arafat. But there has been no claim that the PLO offices in the United States have been involved in terrorism or in conspiracies to commit terrorism. Even the American Israel Public Affairs Committee, which has been mightily pushing this bill, admits that. And there are laws that would put away anyone caught in such crimes.

Rep. Barney Frank, the pungent civil libertarian from Massachusetts, thinks the Anti-Terrorism Act of 1987 is foolish. "It's a mistake," he says, "for friends of Israel to put this much energy into the bill because even if it passes, it's not going to accomplish anything with regard to terrorism. Oh, the bill might accomplish one thing. By outlawing the PLO here, it'll create an aura of martyrdom around the PLO."

Morton Halperin, who runs the Washington office of the American Civil Liberties Union, points out that "it is clearly a violation of the rights of free speech and association to bar American citizens from acting as agents seeking to advance the political ideology of any organization even if that organization is based abroad". And integral to exercising those rights of speech and association is the corollary ability to have an office, a staff and a phone listing. Under the bill, PLO supporters still do have the right to stand on street corners passing out literature, and they are also free to sleep under the bridges at night.

Americans, moreover, whether they have any use for the PLO or not, also have the First Amendment right to receive ideas, including propaganda. The senators and representatives cosponsoring this bill in such large numbers obviously forget, as one dissenting congressman, Don Edwards of California, told me: "Our country was built on dialogue."

Should the bill be passed — or should the State and Justice departments decide to close the Washington office unilaterally in order to short-circuit the anti-terrorism act — a powerful precedent will have been set. Why not close down the offices of the African National Congress? It has engaged in violence and says it has no choice but to continue to.

An official of a Jewish organization that does not support the bill notes wryly that if such legislation had been on the books while Jews were trying to bring the State of Israel into being, the Irgun Zvai Leumi would have been on the proscribed list. That fierce group engaged in terrorism against the British in Palestine for what it considered urgent nationalistic reasons.

Seeing the names of Jack Kemp and Jesse Helms on these bills is not surprising. But some of the other cosponsors — including Barara Mikulski, Bob Packwood and Arlen Specter — show how shallow the attachment to the First Amendment is when you can pick up easy political points by straightarming it. Something for kids to think about in this bicentennial year.

(45) Statement Made in the United States Senate on 4 August 1987

The Closing of the Palestine Information Office

HON. NICK JOE RAHALL II OF WEST VIRGINIA IN THE HOUSE OF REPRESENTATIVES

Mr. Rahall. Mr. Speaker. There is currently legislation pending before this institution as well as the other body which would force the closing of the Palestine Information Office here in Washington as well as the Palestine Liberation Organization mission at the United Nations in New York. This legislation, in my opinion, nothing more than a feel-good bill, is referred to as the antiterrorism bill.

While it is being pushed hard by supporters of the State of Israel as good for Israel there are those in Israel, where debate on Israeli-United States relations flows much easier than in America, the bastion of free speech, who feel as I do that dialog and negotiation are the solution to the problem of the displaced Palestinians in the Middle East.

I received a letter recently from a member of the Israeli Knesset, Maj. Gen. Matti Peled, eloquently stating a very valid argument against this bill. In his letter, he reiterates a desire I know that I share with all of you — peace between Israel and her neighbors in the Middle East. And he argues that in order to bring about that peace, dialog, and negotiation is necessary.

I would like to share Major General Peled's letter with all of my colleagues, as well as the American people, because the points raised here need to be heard.

July 23, 1987.

Dear Member of Congress. I am writing to you concerning the bill known as "The Anti-Terrorism Act of 1987", which is aimed at closing down the PLO offices in the United States. This is being presented as a "pro-Israel" bill, and for that reason US senators and representatives who consider themselves friends of Israel are being urged to support it.

As a member of the Israeli Knesset (Parliament), I would like to dispute that view. I believe that achieving peace is a prime requirement for Israel's long-term survival and prosperity. There can be no peace without negotiations between the Israeli government, representing the Israeli people, and the representatives of the Palestinian people. Such representatives can only be chosen by the Palestinians themselves, and on each occasion that the Palestinians were asked for their opinion, they unequivocally expressed their support for the Palestinian Liberation Organization, the PLO. Such for example, was the result of the 1976 municipal elections on the West Bank, which were the last free elections to be held there. Similar results were the outcome of a public opinion poll, held in the Occupied Territories in August 1986. Indeed, the Government of Israel itself, in refusing to permit new municipal elections on the West Bank, admits that in its view such elections would be won by supporters of the PLO.

Together with many of my fellow-citizens of Israel, I have been urging the Israeli Government to reconsider its policies and to agree to negotiate with the PLO in the context of an international peace conference. Recently this idea has been spreading: not only opposition members such as myself, but also Ezer Weitzmann, member of the Israeli Cabinet, as well as several Knesset Members from the Israeli Labor Party, have publicly voiced their support for Israeli negotiations with the PLO.

Passage of the bill closing the PLO offices in the US would, in my view, constitute a grave setback for the Middle East peace process. It would mean

total abdication by the US of any role as a mediator in the Middle East conflict. Hardliners in the Israeli Cabinet would be encouraged to persist in their intransigent position and their refusal to talk with the PLO. Far from "stopping terrorism", as it is supposed to do, this bill would further escalate the cycle of bloodshed and violence in the Middle East.

Therefore, as an Israeli concerned with the wellbeing of my country and my people, I urge you to voice your opposition to this so-called "Anti-Terrorism Act". By so doing, you will not be taking an "anti-Israel" stand; on the contrary, the rejection of this bill will be compatible with the long-term interests of the State of Israel and will be seen as such by a substantial number of Israel's citizens.

Yours Sincerely

Major General Matti PELED,
Member of Knesset.

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(46) Introduction and Adoption of the "Anti-Terrorism Act of 1987" in the United States Senate in the Form of an Amendment to the Foreign Relations Authorization Act, Fiscal Year 1988[1]

(*Congressional Record*, Vol. 133, No. 157, 8 October 1987, pp. S 13787 and S 13851-S 13855)

Foreign Relations Authorization Act, Fiscal Year 1988

The Senate resumed consideration of S. 1394.

The Presiding Officer. The Senator from Rhode Island.

Mr. Pell. Mr. President, what is the pending business?

The Presiding Officer. The pending business is S. 1394, the State Department authorization bill.

. . . . . .

Mr. Grassley. Mr. President, I wish to send an amendment to the desk.

The Presiding Officer. Is there objection to setting aside the Helms amendment, No. 914?

Without objection, it is so ordered.

AMENDMENT NO. 940

(Purpose: To make unlawful the establishment or maintenance within the United States of an office of the Palestine Liberation Organization, and for other purposes)

Mr. Grassley. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The Presiding Officer. The clerk will report the amendment by the Senator from Iowa.

The legislative clerk read as follows:

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[1] This amendment was identical to the separate bill earlier introduced in the United States Senate ; see document 40 above.

The Senator from Iowa [Mr. Grassley] proposes an amendment numbered 940.

Mr. Grassley. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The amendment is as follows:

To be added at an appropriate place in the bill:

SHORT TITLE

Section 1. This Act may be cited as the "Anti-Terrorism Act of 1987".

FINDINGS ; DETERMINATIONS

Section 2 *(a)*. The Congress finds that —

(1) Middle East terrorism accounted for 60 percent of total international terrorism in 1985;

(2) the Palestine Liberation Organization (hereafter in this Act referred to as the "PLO") was directly responsible for the murder of an American citizen on the *Achille Lauro* cruise liner in 1985, and a member of the PLO's Executive Committee is under indictment in the United States for the murder of that American citizen;

(3) the head of the PLO has been implicated in the murder of a United States Ambassador overseas;

(4) the PLO and its constituent groups have taken credit for, and been implicated in, the murders of dozens of American citizens abroad;

(5) the PLO covenant specifically states that "armed struggle is the only way to liberate Palestine. Thus it is an overall strategy, not merely a tactical phase";

(6) the PLO rededicated itself to the "continuing struggle in all its armed forms" at the Palestine National Council meeting in April 1987; and

(7) the Attorney General has stated that "various elements of the Palestine Liberation Organization and its allies and affiliates are in the thick of international terror".

(b) Therefore, the Congress determines that the PLO and its affiliates are a terrorist organization and a threat to the interests of the United States, its allies, and to international law and should not benefit from operating in the United States.

PROHIBITIONS REGARDING THE PLO

Section 3. It shall be unlawful, if the purpose be to further the interests of the Palestine Liberation Organization or any of its constituent groups, any successor to any of these, or any agents thereof, on or after the effective date of this Act —

(1) to receive anything of value except informational material from the PLO or any of its constituent groups, any successor thereto, or any agents thereof;

(2) to expend funds from the PLO or any of its constituent groups, any successor thereto, or any agents thereof; or

(3) not withstanding any provision of the law to the contrary, to establish

or maintain an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof.

ENFORCEMENT

Section 4 *(a)*. The Attorney General shall take the necessary steps and institute the necessary legal action to effectuate the policies and provisions of this section.

(b) Any district court of the United States for a district in which a violation of this Act occurs shall have authority, upon petition of relief by the Attorney General, to grant injunctive and such other equitable relief as it shall deem necessary to enforce the provisions of this Act.

EFFECTIVE DATE

Section 5 *(a)*. Provisions of this Act shall take effect 90 days after the date of enactment of this Act.

(b) The provisions of this Act shall cease to have effect if the President certifies in writing to the President *pro tempore* of the Senate and the Speaker of the House that the Palestine Liberation Organization, its agents, or constituent groups thereof no longer practice or support terrorist actions anywhere in the world.

Mr. Grassley. Mr. President, the contents of the amendment now before this body are exactly the contents of legislation introduced as the Anti-Terrorism Act of 1987. That bill — not this amendment, that bill has 50 cosponsors, ranging from 21 Democrats to 29 Republicans.

So I myself, not for the other Member cosponsors, unless they later on decide they want to cosponsor, bring this amendment before this body.

Mr. President, I want this body to consider the following undisputed facts that are not in any way in dispute: In 1974, a TWA jet was exploded in midair by the Palestine Liberation Organization. Eighty-eight people were killed, including many Americans.

In 1976, an aide to Senator Jacob Javits was murdered by an affiliate of the PLO.

In 1985, PLO terrorists took credit for the massacres in the Rome and Vienna airports.

Later in 1985, PLO guerrillas hijacked the *Achille Lauro* and killed an American passenger, Leon Klinghoffer.

Abu Abbas, who is wanted in connection with the *Achille Lauro* hijacking, is now a member of the PLO's Executive Committee.

I would also like this body to consider the following astonishing fact: The PLO — the world's preeminent terrorist organization — has operated two offices within the borders of the United States for the past 10 years. Within the shadow of the White House, the PLO maintains an information office.

I suppose technically that may be in transition now because of some changes that the State Department is making. But the PLO also maintains a UN observer mission in New York. For some time, Members of Congress have questioned the administration policy which permits PLO operations on our soil. Consequently, several months ago, I, along with Senators Dole, Lautenberg, Metzenbaum, and Boschwitz, introduced the Anti-Terrorist Act of 1987, that I previously referred to

and in the intervening time since our news conference, we now have 50 Senators who have cosponsored this bill to shut down the PLO safe harbor in the United States.

So, at least 50 Members of this body believe that we ought to shut down the PLO safe harbor in the United States.

We introduced this legislation because we cannot support the hypocrisy of talking tough about terrorism while playing host to the world's kingpins of terror.

Today I am offering the Antiterrorism Act as an amendment to this State Department authorization bill, because I think we can wait no longer to deal with this very important issue.

Mr. President, PLO offices in Europe have long been used to support terrorist operations. Their European agents recruit, rent safehouses, provide identities and documents, choose potential targets, and collect operational intelligence. The *New York Times* reported on April 14, 1986, that each PLO mission in Europe has on its staff a "specialist in clandestine operations including terrorism".

Moderate Arab leaders, disgusted with the PLO and its commitment to terror, have responded. And they have responded more decisively than we have in this country. President Mubarak of Egypt and King Hassan of Morocco have acted decisively to close the PLO offices on their soil, joining King Hussein of Jordan who did so a year earlier.

Some have suggested that legislation to close the PLO offices violates the free speech guarantee of the first amendment. I disagree. No foreign entity has a constitutional right to operate on our soil. Our Government does not recognize the PLO, and has committed itself not to do so until the PLO ends its policy of terror. Moreover nothing in this legislation — absolutely nothing in this legislation — would restrict the right of anyone in the United States to exercise his first amendment right of free speech to speak out in support of the PLO.

With respect to the New York office in particular, the fact that it is loosely connected with the United Nations does not confer any automatic rights for the PLO nor create any absolute obligations on the United States. The UN Office of Legal Affairs has ruled that —

> Permanent observer missions (such as that of the PLO) are not entitled to diplomatic privileges or immunities ... If they are not listed in the United States diplomatic list, whatever facilities they may be given in the United States are merely gestures of courtesy by the United States authorities.

Nor does the United Nations headquarters agreement confer any particular rights for the PLO. The terms under which the United States accepted the headquarters agreement specifically state that —

> Nothing in the Agreement shall be construed as in any way diminishing ... the right of the United States to safeguard its security and completely to control the entrance of aliens ...

Under the power of this reservations clause, the United States has, on hundreds of occasions, excluded or expelled from US territory various delegates, representatives, or invitees of the United Nations who, it believed, posed a threat to American security. Recently, for example, the Soviet Union — which enjoys far greater rights under the charter than a mere observer delegation — was ordered by the United States to send a third of its delegation home.

Those who allege that this legislation will hurt the peace process have it exactly backwards. Egypt, Jordan, and Morocco have closed the PLO offices in those countries to send a clear message. That message is if the PLO wants to participate in the diplomatic process, the first step must be to renounce terror. It is this, and

nothing more or less, that motivates our actions to close the PLO offices in the United States.

Mr. President, as to that portion of this amendment that relates to the United Nations office, we all know the relationship that the PLO has had with Colonel Qadhafi and the role that Libya has played in fomenting terrorism around the world. How many of my colleagues know and how many Americans know that the Libyan delegate to the United Nations has just — and I mean just in the month of September — been elected chairman of the General Assembly's Sixth Committee, which is in charge of the United Nations' terrorism policy?

Mr. President, it's incredible to me that Colonel Qadhafi is now in charge of terrorism policy at the United Nations. I cannot believe that we are going to sit by and let this kind of thing happen. We should all be outraged. Apparently, UN delegates have been sarcastically joking that no other country knows more about terrorism and is, therefore, more suited for the job, than Libya.

The amendment before us, Mr. President, will strike a body blow against terrorism. It is going to send a message, a very strong message, that this body will do everything within its power to prevent, at the very least, a terrorist attack within our borders. I, therefore, urge my colleagues to adopt this amendment.

The Presiding Officer. Is there further debate on the amendment by the Senator from Iowa?

Mr. Bingaman. Mr. President, I take the floor to oppose the amendment that is offered by my distinguished colleague from Iowa. And I need to oppose the amendment — and I want to be precise on this — in its present form and as it presently reads.

The amendment embodies what was S. 1203, the Antiterrorism Act of 1987. In my view, Mr. President, we need to further explore the issues raised by this amendment. It is an amendment that has not had hearings, has not been considered in committee, and one that raises very serious issues of constitutional rights; it therefore needs to be considered very seriously by this body.

The proposed amendment would make it illegal for any American citizen who was sympathetic to the non-terrorist activities of the PLO, to open an office to publicize the PLO's non-terrorist views, if that American citizen operated the office "at the behest or direction of" the PLO. If that citizen wanted to operate his or her own office, at his or her own expense, to conduct a campaign to publicize the legitimate views of the PLO, it would be unlawful for that citizen to take any direction in that effort from any representative of the PLO.

The illegality here that is contemplated in this statute would be the taking of any direction from the PLO. The citizen could conduct the same campaign if he or she did not act "at the behest or direction of" the PLO, or did not take directions from any other organization but one — the PLO. The citizen could conduct a similar campaign "at the behest or direction of", or even under the absolute control of, any other foreign country or principal which had registered its agent with the Justice Department. So the amendment prohibits certain activities with, connections to, or associations with, the PLO. But the amendment does not clearly specify what those activities, connections, and associations are. We are left to wonder what "at the behest and direction of" means. Thus, the amendment would prohibit citizens — that means citizens of this country — engaging in certain collective efforts to espouse certain public policy positions — positions which they have the undeniable constitutional right to advocate. It burdens Americ'an citizens' first amendment rights to freedom of association. It places limitations on, and obstacles in the way of, certain American citizens exercising their right to advocate beliefs which are otherwise protected under the Constitution.

To me, the constitutional analysis of the language in its current form is straightforward. The amendment before us today would limit, restrict, and burden the exercise of the rights of association and free speech under the first amendment by certain particular persons espousing certain specific views. Therefore, the amendment amounts to at least an incidental restriction on the freedom of association and the right of free speech. But the amendment cannot meet the test in *United States* v. *O'Brien* in at least one significant respect: The Government interest in the legislation is not "unrelated to the suppression of free speech". The amendment, whether by design or by its use of vague terms, discriminates against the free speech rights of only those American citizens who want to consult with and coordinate their activities with the PLO or have some other association with the PLO.

Proponents of the current language of the amendment argue that there will be no burden on the exercise of association and free speech rights. They say that American citizens still will be able to open up an office with a different title, advocate PLO views, and collect money from the PLO so long as they do not do it "at the behest or direction of" the PLO.

But I asked an advocate for the amendment whether, for example, a monthly phone call to representatives of the PLO would mean "at the behest or the direction of" the PLO. He told me "No", that that would only be consultation with the PLO. That seems like a pretty fine distinction to me. Because violating the law depends on a precise interpretation of vague terms such as "at the behest of", and getting all of these fine distinctions just right, the effect of the law will be uncertainty. Ideologically motivated supporters of the PLO will have to err on the side of caution because of the danger of drawing the line at the wrong place. Thus, precisely the burdens and the limitations on the right of free speech that I am worried about will come to pass.

Of course, this amendment is before this body in spite of, and not because of, its constitutional problems. The amendment is supported by numerous Senators who are otherwise staunch protectors of the Bill of Rights. They do so because the terrorist activities of the PLO are truly reprehensible and repugnant to all of the values for which this Nation stands. We are so justifiably outraged by the terrorist activities of the PLO, that we see red. We are so angered, and rightly so, that we cannot see the damage to the Constitution which this amendment may inflict.

But we must try to see clearly through our anger. We must try to see the dangerous constitutional precedent which this amendment threatens to establish. To see better, let us imagine an amendment which would provide the following.

> "No American citizen shall be permitted to disseminate information to the American public from any office which he or she maintains at his or her own expense ... if that citizen coordinates his or her activities with the advice and direction of any group ... which a majority of the Congress of the United States has at any time declared to be 'a terrorist organization and a threat to the interests of the United States'."

To quote from the preamble to the amendment before us now.

And remember that the ideological make-up of the Congress and the targets of its sense of outrage can change from time to time with the tides of public opinion. One Senator's freedom fighter one day may become another Senator's terrorist the next. So let us suppose further that a majority of a future Congress were to determine that the African National Congress is a terrorist organization and a threat to the interests of the United States. Or that the United Nicaraguan Opposition is such an organization. Or that the Sandanista government in Nicaragua is such an organization. Or that the IRA or the United Patriots for

Justice is such an organization. Or suppose that such an amendment had been law 45 years ago, and that a simple majority of the Congress had determined then that the World Zionist Organization, because of the activities of its military arm, the Irgun, was such an organization.

Given those scenarios, would we be as pleased to enact such an amendment? Would we be as comfortable that we were not restricting basic first amendment freedoms of speech and association? I think not.

We are only tempted to adopt the proposed amendment because it singles out certain connections with one particular organization which has conducted totally reprehensible terrorist acts. We think for a moment that we can limit our intent to just this one single group — that we can avoid setting precedent that will erode our first amendment rights with respect to other organizations and other first amendment advocacy rights generally.

But we cannot limit that damage. The imaginary amendment I proposed is only different because it applies generally and not just to a single group. Passage of the amendment proposed today enacts a principle into law which is destructive of basic constitutional rights.

I believe it is critical for this Senate to condemn the activities of terrorist organizations like the PLO. We have a responsibility to call to the attention of the world their hateful acts and take whatever steps are necessary to combat their terrorist activities. And I have consistently supported Senate bills and resolutions to that effect.

But it is quite another thing to express our outrage by restricting the constitutional rights of American citizens. Such a step would have no tangible effect on the terrorist actions of the PLO. It would only reduce the freedoms which our own citizens enjoy.

It is ironic that we have just completed hearings on the nomination of Robert Bork. In those hearings, many Senators spoke eloquently about their concern about the right of free speech in the first amendment. One of the points made over and over again was that the right of free speech of all American citizens should not be limited by a narrow reading of the Constitution. Senators quite correctly upheld the standard of *Brandenburg* v. *Ohio* that stated that the right of political speech should be limited only to the extent of speech which incited or produced "imminent lawless action".

But this proposed legislation would amend the Brandenburg decision. It would add a second, significant restriction on the right of free political speech. It would say the political speech will be illegal if it either incites "imminent lawless action", or if it comes out of an office which American citizens run with the advice, consultation, and some kind of direction of one particular organization — the PLO. Before we vote on the amendment, we need to recall the eloquence with which many spoke before the Judiciary Committee less than 3 weeks ago.

The least that we should do today is to vote for a motion to table the amendment pending consideration by the relevant committee of its merits. Hearings have previously been scheduled on S. 1203, and I believe very sincerely, Mr. President, we should hold those hearings before we move on this legislation.

Moreover, we need to explore whether the language of the legislation before us should be modified and clarified in such a way as to remove any impediments to the exercise of American citizens' constitutional rights of free speech and association. This amendment has been offered at the 11th hour, and this body has not had enough time to review the constitutional implications of the language in the legislation. Nor have we had the chance to contemplate alternative formulations that could achieve the legitimate objectives of the legislation without restricting the American citizens' constitutional rights.

On this 200th anniversary of the Constitution, Mr. President, I believe the amendment needs to be seriously considered before action is taken on it. I hope an effort will be made to table the amendment. If it is, I will support that effort. I thank the Chair.

The Presiding Officer. Is there further debate?

The Senator from Iowa.

Mr. Grassley. Mr. President, first of all, I think we ought to pay close attention to any colleague who raises questions about legislation that might violate first amendment rights, so I listened, as I should, closely to my colleague from New Mexico. But I find his arguments wanting in several respects because this amendment in no way violates any of the basic freedoms of speech of American citizens.

I think first of all I should address my colleague's call for hearings on an amendment like this before we act on it.

I think that the fact that 50 Members of this body have cosponsored legislation which is exactly like the amendment offered, speaks for the concern of my colleagues — that is half of this body — and the study that has already been given to this legislation. And yet, year after year, month after month, and I suppose almost daily even though it is not reported in our newspapers, there are acts of terrorism all over this world. Maybe not immediately impacting upon Americans, but a challenge to the policy of our Government to root out terrorism anywhere in the world regardless of who foments it.

So I feel that hearings will only prolong the process, a process that already has probably gone on too long concerning the acts of terrorism against Americans that I have already enunciated.

I think, too, that I need to address more specifically this issue of constitutionality because nowhere in the Constitution is there a right of a foreign entity to operate an office in the United States to practice its method of killings and assassinations or to spend funds to that end.

This is not constitutionally protected speech as we know it. There are a number of examples of prohibiting certain activity by foreign nationals which claim to have an impact on first amendment rights, such as restrictions on campaign funds by foreign nationals and regarding the labeling of propaganda, as such, when it is being disseminated on behalf of a foreign national.

In any event, if a US citizen desires to set up an office and to promote the views of the PLO, there is nothing, absolutely nothing, in this amendment that prevents that.

What we prevent in this legislation is nothing more or nothing less than the expenditure of PLO funds and the running of an office at the behest or direction of the PLO.

These are all activities which are not in my view, or anybody else's, constitutionally protected.

We allow, for instance, in this legislation, the receipt of informational materials so that there is no infringement upon the freedom of speech, *per se*.

I think we ought to think twice before extending the first amendment right to foreign entities using our soil and facilities in our country to practice and to carry out acts of terrorism or even preach that.

The amendment contains no broad prohibition on Americans joining together to advocate on behalf of the PLO. It does not even prohibit contact with the PLO.

It prohibits only a principal agency relationship between the PLO and American citizens.

There is no constitutional doctrine which gives Americans a constitutional right to serve as agents of a foreign power. There is no case that we have found and no

principle we can discern which allows a foreign group hostile to the United States to insist on functioning here merely because individual Americans allege that they wish to submit themselves to its domination and control or to serve as its agents.

So I believe, Mr. President, that this issue has been thought out very well from the standpoint of good public policy, but more importantly, from the standpoint of constitutionality because this Senator in no way wants to step on the Constitution of the United States and primarily upon one of the most important rights protected by that document, the First Amendment, which includes freedom of speech.

I yield the floor.

Mr. Lautenberg. Mr. President, I join Senators Grassley and others in offering this amendment to close down the PLO office in Washington DC and the PLO Observer Mission in the United Nations. This amendment which tracks S. 1203, the Anti-Terrorism Act of 1987, also makes it illegal to receive anything of value except informational material from the PLO or its agents in furtherance of the PLO's purposes or to spend money from the PLO or its agents to further those purposes.

Mr. President, I have long advocated the closing of the PLO office in Washington and the Observer Mission in New York, both in testimony before the Senate Judiciary Subcommittee on Terrorism last year, and in questioning various witnesses before the Senate Budget and Appropriations Committees on which I sit. I have repeatedly urged the Attorney General and Secretary Shultz to investigate how this could be done.

Last year, I authored a provision in the Commerce-State-Justice appropriations bill to require that the Department of Justice investigate whether the PLO office in Washington was in compliance with the Foreign Agents Registration Act. Finally, the State Department has announced its intention to close the PLO's information office in Washington, a welcome step.

But Mr. President, this amendment goes farther than the State Department's action. It will finally close not only the office in Washington but the PLO office in New York. This amendment hangs a sign on America's doors that says, "Terrorists not welcome here". And well it should. The time is long past when our country should hold out a welcome mat for the PLO, whose record of hijacking, murder, and kidnappings is well-known and well-documented. Instead, we should pull the rug out from under an organization who so clearly embodies, in rhetoric and in action the word terrorism.

Yasser Arafat the head of the PLO has long been recognized by this administration as a prime culprit in terrorist crimes. On 8 April 1986, Attorney General Meese declared, "We know that various elements of the PLO and its allies and affiliates are in the thick of international terror. And the leader of the PLO, Yasser Arafat must ultimately be held responsible for their actions". In referring to the fight against terror, Meese stated, "you don't make real progress until you close in on the kingpin".

Moreover, the PLO has been implicated in the murder of US diplomats overseas, and has proudly taken credit for the murders of dozens of American citizens abroad. The PLO national charter states that "armed struggle is the only way to liberate Palestine", demonstrating that the dedication to violence is not a mere passing fancy but a well-thought out strategy to achieve its goals.

Nor has the tiger shown any indication of changing its stripes. The recent Palestine National Council [PNC] meeting in Algiers made clear that the PLO has once again said no to peace and yes to terror. At that meeting, the PLO rededicated itself to armed struggle, its code word for terror, in all forms. It

pledged its continued rejection of the Security Council Resolution 242 and the Camp David accords.

This was not mere rhetoric. At the outset of the conference, Arafat's Fatah faction dispatched three infiltrators across the Lebanese frontier to attack Israeli border settlements. The PLO also pledged to seek better relations with Syria on the basis of the struggle for objectives hostile to imperialism and Zionism. It condemned Egypt for its peace treaty with Israel, and canceled the accord to coordinate peace efforts with Jordan. Perhaps most revealing, the Palestine National Council reelected Abul Abbas, currently under US indictment for planning and overseeing the hijacking of the *Achille Lauro* and murdering an American, to a leadership position on the PLO's 15-man executive committee.

If there were still any doubters, the meeting in Algiers made clear that the PLO is not interested in peace, only in violence.

In the wake of the PNC meeting in Algiers, both Egypt and Morocco closed the PLO offices in their countries, as Jordan had earlier. Why have we waited so long?

These offices not only legitimize the PLO's policy of terror. There is a real fear that these offices in Washington and New York might be used as bases for terror. According to an April 13, 1986, *New York Times* article, PLO offices in 18 non-Communist countries were put under close scrutiny by European intelligence and security officials to insure they carry out only official functions.

In that same article the Director General of the Israeli Foreign Ministry was quoted as saying that people attached to PLO offices in Europe were preparing a support structure for terrorist operations. They recruited, rented safehouses, provided identity documents, chose potential targets, and collected operational intelligence.

While all PLO representatives in Europe describe their activities as political, education, and cultural, Professor Wilkinson of Aberdeen University in Scotland, a specialist in Palestinian movements, says there are several kinds of people employed in PLO offices, and they are all ready to do violence.

With such questions about the PLO offices in Europe, can the PLO office in Washington or New York be so different? They, too, say their purposes are cultural, educational, and political. But their former head, Hatem Hasseini, is a member of the PLO Executive Committee. We should not take that chance.

Some have argued that this amendment is unconstitutional because it interferes with free speech and other rights. I disagree.

The bill to close the PLO offices in Washington and New York is constitutional, and was carefully drafted to protect freedom of speech. American citizens remain free to speak on behalf of the PLO, its programs, its views on the Middle East crisis, or even, to the extent it falls short of actual incitement, its use of terrorism.

They may solicit money and contribute it to the PLO, and the bill specifically allows literature from the PLO in any form to enter the country without restriction. Membership in the PLO is not made illegal; it is only the PLO as a foreign entity which is prohibited from transacting business in this country and then only until it renounces the use of terrorism as a political method. The PLO cannot be heard in our courts to argue that its own free speech rights have been abridged, since the PLO is not a domestic entity, and is not entitled to invoke the protection of the first amendment.

If one argues that prohibiting the operation of PLO offices here deprives American citizens of the benefit of direct exchange with members of the PLO and thus violates the Constitution, I would point out that restrictions on access to the United States and its citizens are a necessary adjunct of foreign policy which the courts have consistently upheld over direct challenge. It is clear that claims that this bill is unconstitutional are without merit.

If our tough talk on terror means anything, it means we should not allow a terrorist organization to operate freely in our nation's capital, or in New York City. For too long, this country has said one thing and done another when it comes to terror. Now is the time to deny the PLO a forum on our shores for practicing terror.

I urge my colleagues to act swiftly in passing this legislation.

The Presiding Officer. Is there further debate on the amendment?

Mrs. Kassebaum addressed the Chair.

The Presiding Officer. The Senator from Kansas.

Mrs. Kassebaum. Mr. President, I would like to briefly comment on the remarks offered by the Senator from New Mexico. I thought they were very thoughtful in raising concerns that an amendment such as the Senator from Iowa offers. I can well appreciate Senator Grassley's concerns, but we do have hearings scheduled in the Foreign Relations Committee, October 20, tentatively, but certainly in October, and I think with an issue which is in many ways sensitive to a number of parties it is important for us to have a hearing to explore the ramifications of the issue before we would make this a definitive policy of the United States.

I would just like to lend support to the comments of the Senator from New Mexico. I yield the floor.

Mr. Pell. Mr. President, I recognize very strongly the political force behind this amendment. It has 50 cosponsors, from both sides of the aisle, a great deal of support. Personally, I do not agree with it. We have already closed down the PLO office in Washington, and the one in New York, I think, has the right to be there because of a treaty we have with the United Nations.

In saying this, I want to stress that I violently disagree with the PLO, with what it says, what it stands for, and more important, what it does. I think they are a bad organization, but I must say I recognize they have the right to be there in New York. I do recognize the political force behind this amendment and would suggest that we vote on it.

Mr. Helms. Mr. President, like the distinguished Chairman, I think we ought to go ahead and have a vote, perhaps a voice vote, on the Senator's amendment but before we do I want to commend the Senator from Iowa, Mr. Grassley. He is exactly right. There is no constitutional issue involved here, no more than there would be a constitutional issue involved if your yard were full of rattlesnakes. You would not have to hold a hearing to decide whether you were going to get rid of them or not, or at least prevent them from biting you. He is right on target with this amendment. We can have hearings to ventilate how we feel about the PLO, but the fact that well over half of the Members of the Senate have cosponsored or are cosponsoring the legislation of the Senator from Iowa indicates that it has widespread support.

So, Mr. President, I suggest we go to a vote on it. I commend the Senator.

Mr. Bingaman addressed the Chair.

The Presiding Officer. (Mr. Fowler). Is there further debate?

Mr. Bingaman addressed the Chair.

The Presiding Officer. I could not find the Senator from New Mexico. Excuse the Chair. The Senator from New Mexico.

Mr. Bingaman. Mr. President, let me very briefly respond to the Senator from Iowa. I certainly do not want to delay a vote, and I understand that the managers would like to have this issue voted on very quickly.

I do think it is clear from a reading of the amendment that this is not an amendment designed to root out terrorism in this country. There are laws on the books that prohibit terrorism in this country, and clearly we all support those

laws. This amendment prohibits people from disseminating information, if they do so at the direction or behest of the PLO. As I indicated in my earlier statements, it is clear that US citizens have the right to discuss political issues, public policy issues and the positions of some may be very objectionable to many people in this body, including this Senator. But clearly they have a right to express those views and a right to join together in offices to disseminate that information if they feel that is appropriate.

I do think this is a first-amendment issue. I do think that the right of free speech of individuals — individuals who are US citizens — is at stake here, and I would hope that the Senate would not adopt this amendment until there has been an opportunity to have a hearing and to explore possible changes in this language which would make this amendment consistent with the Constitution which we are honoring on this 200th anniversary. I thank the Chair. I yield the floor.

The Presiding Officer. The question now occurs on the amendment offered by the Senator from Iowa, Mr. Grassley.

The amendment (No. 940) was agreed to.

Mr. Helms. I move to reconsider the vote by which the amendment was agreed to.

Mr. Pell. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. Pell. Mr. President, I would like the *Record* to show on that voice vote I voted in the negative.

Mr. Bingaman. Mr. President, I also would like the *Record* to show that I voted in the negative on that vote.

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(47) Instructions Given by the United States House of Representatives to its Conferees to Accept the Amendment Adopted by the Senate

(*Congressional Record*, Vol. 133, No. 164, 20 October 1987, pp. H 8790-H 8791)

Appointment of Conferees on HR 1777 Foreign Relations Authorization Act, Fiscal Years 1988 and 1989

Mr. Mica. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1777) to authorize appropriations for fiscal years 1988 and 1989 for the Department of State, the US Information Agency, the Voice of America, the Board for International Broadcasting, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The Speaker. Is there objection to the request of the gentleman from Florida?

There was no objection.

MOTION TO INSTRUCT OFFERED BY MR. BURTON OF INDIANA

Mr. Burton of Indiana. Mr. Speaker, I offer a motion to instruct.

The Speaker. The Clerk will report the motion.

The Clerk read as follows:

> Mr. Burton of Indiana moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill (HR 1777) to authorize appropriations for fiscal years

1988 and 1989 for the Department of State, the United States Information Agency, the Board for International Broadcasting, and for other purposes, be instructed to agree to the provisions contained in title XI of the Senate amendment (entitled "Anti-Terrorism Act of 1987").

Mr. Mica. Mr. Speaker, let me say that we have no objection to this. We would be happy to accept the instruction.

Mr. Burton of Indiana. Mr. Speaker, since the motion has been accepted, I will simply submit my formal statement.

Mr. Speaker, my motion would instruct House conferees to agree to an amendment that has broad bipartisan support in both Houses of Congress and passed by voice vote in the Senate.

Though I am confident that this provision would be retained in conference given its broad support, I believe that it is important that the whole House be on record in support of closing the official offices of the PLO in the United States.

The PLO is the world's premier terrorist organization. Its terror is not only directed against our ally, Israel, but directly against American citizens.

In 1974 a TWA jet was exploded in midair by the PLO ; 88 people were killed, including many Americans.

In 1976, an aide to Senator Jacob Javits was murdered by an affiliate of the PLO.

In 1985, Navy diver Robert Stethem was murdered in cold blood by the hijackers of a TWA plane. This terrorist act was carried out by Abu Abbas, who was just a few months ago promoted by the PLO to its executive committee.

The State Department, recognizing the support for the Kemp-Mica-Grassley bill, closed the Washington office of the PLO with considerable reluctance. But the PLO "mission" at the UN will remain open unless the Kemp-Mica-Grassley bill is signed into law.

Some Members have claimed in a "Dear Colleague" that Kemp-Mica-Grassley is "dangerous to civil liberties in the United States and to the search for a just and lasting peace in the Middle East".

I find it hard to understand how throwing a bone to the PLO helps bring peace to the Middle East.

I too would object to the provision if it denied a single American his or her constitutional right to free speech — it does not. The bill prohibits paid agents of the PLO from operating an official office on US soil. It does not prohibit an American of advocating, or even actively promoting, whatever cause they wish within US law.

Nor would this provision conflict with the UN Headquarters agreement, which specifically states that "nothing in the agreement shall be construed as in anyway diminishing, abridging, or weakening the right of the United States to safeguard its own security and completely to control the entrance of aliens".

The bottom line is that the United States cannot talk tough about terrorism while continuing to be a safe harbor for agents of PLO terrorism and legitimating the PLO presence in official bodies and capitals around the world.

Mr. Speaker. I yield back the balance of my time.

The Speaker. The question is on the motion offered by the gentleman from Indiana [Mr. Burton].

The motion was agreed to.

(48) Statement Made in the United States Senate on 3 November 1987

(*Congressional Record*, Vol. 133, No. 175, 3 November 1987, pp. S 15621-S 15622; *ibid.*, No. 187, 20 November 1987, p. 16605; and *ibid.*, No. 196, 20 December 1987, p. H 11224)

THE ANTITERRORISM ACT OF 1987

Mr. Grassley. Mr. President, I want to bring to the attention of my colleagues and the American people an issue that is currently the subject of a great deal of debate among members of the conference committee to the State Department authorization bill.

The issue involves an amendment to State authorization that I sponsored to close the Palestine Liberation Organization offices in the United States until the PLO renounces its policy of terrorism. The amendment, known as the Antiterrorism Act of 1987, has 50 Senate cosponsors as a free-standing bill.

At this time, our State Department is bowing to pressure from the United Nations and is lobbying members of the conference committee arguing that closing the PLO observer mission at the United Nations may conflict with treaty obligations the United States has with UN members.

The battle going on over the Antiterrorism Act is really a battle over two extremely important principles. The first principle is that the United States has a sovereign right and obligation to protect its territory and citizens from terrorism. The second principle involves the absolute requirement that before the United States can be bound to a new provision of a treaty or a new interpretation of a treaty provision, the United States must affirmatively agree to that new provision or interpretation.

Mr. President, there is little or no argument that the PLO is involved in terrorism, and that the United States has the right to act accordingly. One only has to look at the recent elevation of Abbul Abbas to the PLO's executive council to be reminded of the PLO's politics of terror. Abbul Abbas, of course, is wanted in connection with the *Achille Lauro* hijacking and the murder of an American citizen Leon Klinghoffer.

Nevertheless, UN officials, through reinterpreting US treaty obligations argue that the PLO observer mission should have the same privileges and immunities that member States have at the United Nations. In other words, the PLO should be equal to a sovereign government whose office is inviolable under the Charter, and therefore, cannot be closed by the United States even to protect its own territory and people.

Mr. President, there is absolutely nothing in the written agreements between the United States and the United Nations that expressly provides for observer missions. Nevertheless, the United Nations is attempting to force treaty obligations on the United States that have never even been negotiated, let alone ratified by the Senate, and our State Department is bowing to the pressure.

However, despite the State Department's questionable conduct, the United States, up to this point, has never formally acknowledged an international legal obligation to accord the privileges and immunities to members of observer missions beyond the specific requirements in the headquarters agreement relating to entry, residence, and transit.

Historically, the United Nations had a very restrictive view of what privileges and immunities were accorded to observer missions. A 1962 UN Legal Counsel memorandum stated the following:

> "Permanent Observers are not entitled to diplomatic privileges and immunities under the Headquarters Agreement or other statutory provisions

of the host State. Those among them who form part of the diplomatic missions of their Governments to the Government of the United States may enjoy immunities in the United States for that reason. If they are not listed in the United States diplomatic list, whatever facilities they may be given in the United States are merely gestures of courtesy by the United States authorities."

This narrow interpretation continued until observer status was given to the PLO in 1974. Since then, the United Nations, over US objections, has steadily attempted to unilaterally extend powers and privileges to observer missions. For example, the General Assembly adopted the so-called 1975 Vienna Convention over US opposition. The convention would have given observer missions the same rights accorded to permanent missions. The United States has never signed the convention, and therefore, cannot be bound to its terms.

Nevertheless, the UN Legal Counsel has attempted to bind the United States to the spirit, if not the letter, of the convention by reinterpreting the UN Charter. In 1982, the UN Legal Counsel attempted to expand the interpretation of Article 105 to include the inviolability of observer missions. However, there is absolutely nothing in Article 105 of the headquarters agreement that even mentions observer missions, let alone any obligations that the United States owes to them.

So, Mr. President, what exactly is the problem? The problem is that even though the United States has never actually agreed to a reinterpretation of the UN Charter that would extend full privileges and immunities to the PLO observer mission, the United Nations is on the verge of successfully forcing the United States into such an agreement with no negotiation and no Senate ratification.

What makes these events even more incredible is the fact that the State Department is feebly acquiescing to this force, contrary to an internal State Department memorandum of last April. According to this internal memorandum, State Department officials should "refuse to recognize an obligation to accord inviolability to the premises of an observer mission ...". Unfortunately, those in charge at our State Department have disregarded this advice and instead refused to protect or promote American interests in this matter.

Mr. President, State Department bureaucrats may sit by and let American rights be tossed out the door, but this Senator is going to do everything he can to stop such a blatant usurpation of American sovereignty.

As I have stated, the battle over this policy of forfeiting American interests at the United Nations, in regard to observer missions, is a subject of debate this week among the conferees to the State Department authorization bill. The debate centers on the Antiterrorism Act amendment which, as I noted earlier, will close the PLO observer mission until the PLO renounces its policy of terrorism. Of course the UN hierarchy has been arm-twisting the State Department bureaucracy into lobbying against the amendment.

I would like to remind my colleagues on the conference committee that even if the State Department isn't willing to defend US rights in this matter, the Congress has the power and the obligation to do so. Notwithstanding UN interpretations of US treaty obligations, Congress has the constitutional authority to modify those interpretations through legislation. In fact, according to the landmark case of *Whitney* v. *Robertson*, Congress even has the power to modify binding treaty obligations. Therefore, Congress has the authority to define, on our own terms, what obligations are owed to the PLO.

Mr. President, we are at a crucial point in our battles to promote US principles of protecting American sovereignty and putting an end to terrorism. Congress can follow the State Department line and watch these principles collapse, or Congress

can adopt the Antiterrorism Act and ensure the protection and preservation of these principles.

Mr. President, I yield back the remainder of my time.

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(49) Statement Made in the United States Senate on 20 November 1987

THE ANTI-TERRORISM ACT OF 1987

Mr. Grassley. Mr. President, two weeks ago, I addressed this body in regard to the current debate over closing the Palestine Liberation Organization's offices in the United States until the PLO renounces its policy of terrorism.

As I noted then, this debate is taking place among the conferees to the State Department authorization bill over an amendment I sponsored, referred to as the Anti-Terrorism Act of 1987.

Today, I want to bring to the attention of my colleagues and the American people some of the discussion and debate that has gone on behind the scenes, leading up to the conference.

On May 14, I, along with 23 colleagues introduced S. 1203, the Anti-Terrorism Act of 1987, which now has 51 cosponsors. In July, I received a letter from Secretary of State George Shultz explaining the State Department's position on the bill. Secretary Shultz states the following:

> "First and foremost, I want to emphasize that this administration shares the concerns evident in the legislation. We condemn, unequivocally, terrorist acts by all groups, including acts associated with the PLO. We also deplore the failure of the PLO to accept UN Security Council Resolutions 242 and 338 and to recognize Israel's right to exist. We have consistently made clear our view, that the PLO's negative role has been one of the serious obstacles in the Middle East peace process. The issue facing us now is how best to respond to the PLO's negative actions."

The Secretary goes on to explain that the closing of the PLO office in Washington by the administration would be a strong possibility. Of course, in the meantime, the administration has ordered this office to be closed. Unfortunately, however, the closure has been postponed for the time being, and a lawsuit has been filed to prevent the closure.

Nevertheless, the most troubling statements in the letter referred to the PLO observer mission at the United Nations. As I detailed earlier in a statement on the Senate floor, the United States has no international legal obligation that would preclude it from closing the PLO observer mission. An internal State Department report from last April substantiates this fact. Incredibly, however, Secretary Shultz either didn't know about this report or he decided to ignore it. Nevertheless, in his letter, which was sent two months after the report was circulated, the Secretary stated: "As far as closure of the PLO observer mission is concerned, this would be seen as a violation of a US treaty obligation under the UN headquarters agreements."

It's interesting to note that the Secretary didn't say that closing the office would be a violation. He said it "would be seen as a violation". So, instead of protecting American rights, the Secretary has bowed to international powers that have tried to twist the law to meet their own self-interests.

An example of this foreign pressure occurred last month, when United Nations Secretary-General Pérez de Cuéllar sent a very disturbing letter to our UN

representative, Ambassador Walters. The letter was reportedly sent after a meeting between the Secretary-General and Zehdi Terzi, the PLO permanent representative. In this letter, the Secretary-General stated the following:

> "I would trust, in the circumstances, that the United States Government will continue to vigorously oppose any steps in the Congress to legislate against the Palestine Liberation Organization observer mission to the United Nations. Since the legislation runs counter to obligations arising from the headquarters agreement, I would like to underline the serious and detrimental consequences that it would entail."

Mr. President, notwithstanding the fact that the Secretary-General fails to realize that the Congress is part of the US Government, I have real concerns about the contents of this letter. Here, we have an example of a foreign leader lobbying one branch of our Government to oppose another branch. In other words, a foreign power attempted to provoke a conflict within our Government and, unfortunately succeeded.

I hope this interference in our internal affairs will not be tolerated by the Congress or even the administration. We all know that nothing unifies Americans more than a foreign leader trying to manipulate US policy.

Mr. President, I urge my colleagues to stand up to this international pressure, and protect American interests by supporting the Anti-Terrorism Act of 1987.

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(50) Statement Made in the United States Senate on 10 December 1987

LEAVE THE PLO OFFICES OPEN

The Speaker *pro tempore*. Under a previous order of the House, the gentleman from Michigan [Mr. Crockett] is recognized for 5 minutes.

Mr. Crockett. Mr. Speaker, I rise today in opposition to a grave error that I believe this body is about to make. On Tuesday, House conferees voted by a narrow margin to retain Senator Grassley's amendment to the State Department authorization bill. That amendment would force the closing of the Palestine Liberation Organization's Observer Mission to the United Nations and the Palestine Information Office in Washington.

I oppose the Grassley amendment for three reasons. First, closing the PLO Observer Mission is in violation of our treaty obligations to the United Nations. The Headquarters Agreement of June 26, 1947, between the United States and the United Nations, obliges the United States as the host country to permit UN delegations to enter and remain in the United States to carry out their official functions at the United Nations. That would, of course, include the PLO Mission, which was established at the express invitation of the General Assembly in resolution 3237 of November 22, 1974.

Second, closing the PLO offices violates the first amendment rights of US citizens. No one has ever alleged any criminal activity by these offices of the PLO. Even the Justice Department has taken the position that the PLO offices have broken no laws. To require that the PLO staff, who are American citizens and permanent residents of the United States, cease their informational and UN activities would deny them their first amendment right to engage in lawful political activity and their right to political association. To deny any American access to such lawful information and association is a clear violation of the first amendment as well.

Finally, I believe that closing the PLO offices creates but another obstacle to a peaceful solution of the Middle East conflict. There can be no Middle East peace without the participation of the Palestinian people. I am convinced that the only way a comprehensive peace settlement will be achieved is through an international conference, involving all parties, including the PLO.

I strongly oppose the Grassley amendment, and I will vote "No" on the State Department authorization bill.

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(51) House Conference Report No. 100-475: Joint Explanatory Statement of the Committee on Conference, to Accompany the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989[1]

(*United States Code Congressional and Administrative News, 100th Congress-First Session*, No. 12, February 1988, Legislative History, pp. 2314, 2370 and 2431-2432)

Foreign Relations Authorization Act, Fiscal Years 1988 and 1989

P.L. 100-204, see page 101 Stat. 1331

DATES OF CONSIDERATION AND PASSAGE

House June 23, December 15, 1987

Senate October 8, December 16, 1987

House Report (Foreign Affairs Committee) No. 100-34, March 27, 1987 [To accompany HR 1777]

Senate Report (Foreign Relations Committee) No. 100-75, June 18, 1987 [To accompany S. 1394]

House Conference Report No. 100-475, December 14, 1987 [To accompany HR 1777]

Cong. Record Vol. 133 (1987)

The House bill was passed in lieu of the Senate bill after amending its language to contain much of the text of the Senate bill. The Senate Report, is set out below and the House Conference Report and the President's Signing Statement follow.

Joint Explanatory Statement of the Committee of Conference

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1777) to authorize appropriations for fiscal years 1988 and 1989 for the Department of State, the United States Information Agency, the Voice of America, the Board for International Broadcasting, and for other purposes, submit the following joint statement to the House and Senate in explanation of

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[1] No excerpts are included in this submission from the report of the House of Representatives Foreign Affairs Committee (House Report No. 100-34, 27 March 1987) or from the report of the Senate Foreign Relations Committee (Senate Report No. 100-75, 18 June 1987) as neither Committee included a provision along the lines of the "Anti-Terrorism Act of 1987". See document 46 above. The Conference Report and Joint Explanatory Statement are also included in *Congressional Record*, Vol. 133, No. 198, 14 December 1987, pp. H 11297-H 11351.

the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Title X — Anti-Terrorism Act of 1987

The Senate amendment (title XI) expresses the findings of the Congress with respect to the terrorist activities of the Palestine Liberation Organization (PLO), makes it unlawful for anyone, for the purpose of furthering the interests of the PLO, to receive anything of value, except information, from the PLO, makes it unlawful to spend funds provided by the PLO, and makes it unlawful to establish or maintain an office within the jurisdiction of the United States at the behest or direction of, or with funds provided by, the PLO. In addition, the Senate amendment requires the Attorney General to enforce these provisions in the United States District Courts and grants those courts authority to issue the necessary decrees to enforce these provisions.

The House bill contains no comparable provision.

The conference substitute (sec. 1001-1005) is the same as the Senate amendment.

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(52) Adoption by the United States House of Representatives of the Conference Report on the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989[1]

(*Congressional Record*, Vol. 133, No. 199, 15 December 1987, pp. H 11420-H 11423, H 11425, H 11427 and H 11429-H 11431)

Conference Report on H.R. 1777, Foreign Relations Authorization Act, Fiscal Years 1988 and 1989

Mr. Mica. Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 1777) to authorize appropriations for fiscal years 1988 and 1989 for the Department of State, the U.S. Information Agency, the Voice of America, the Board for International Broadcasting, and for other purposes.

The Clerk read the title of the conference report.

Mr. Broomfield. Mr. Speaker, I support the conference report on the fiscal years 1988-89 State Department authorization bill, H.R. 1777, and encourage my colleagues to give it favorable consideration.

The House conferees were under instructions from the House to accept the Grassley amendment which would order closed the United States offices of the Palestine Liberation Organization. This provision has been retained.

Ultimately the issues regarding closure of the PLO's offices in the United States may be resolved by the courts. However, the conferees proceeded on the basis of strong congressional opinion on this issue.

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[1] Portions of the debate not relevant to the adoption of Title X have been omitted.

Ms. Snowe. Mr. Speaker, I yield myself 4 minutes.

Mr. Speaker, I rise in support of the conference report for H.R. 1777. This legislation authorizes the budgets of the State Department, the U.S. Information Agency, the Board for International Broadcasting, the United Nations, and other foreign affairs agencies.

OTHER PROVISIONS

This conference report also contains other important provisions. It would:

Close the PLO information offices in Washington and New York.

The State Department is threatening to recommend a veto on issues such as:

The closure of the PLO office in New York.

Mr. Burton of Indiana. Mr. Speaker, I have my differences with the State Department but I rise in support of the conference report because it takes an important step against the Palestine Liberation Organization (PLO). A few weeks ago I offered a motion to instruct conferees to accept a Senate provision that would close the PLO offices in Washington and the PLO's U.N. mission in New York. This provision prevailed in conference.

Mr. Speaker, there has been a storm of controversy about this provision, much of it based on misunderstandings. Recently the *New York Times* echoing the State Department, editorialized that signing the PLO provision into law would "mock the Constitution and treaties relating to the U.N.".

This is complete and utter nonsense and it is time we set the record straight. First, the U.S. District Court ruled that the PLO's case that its first amendment rights were violated was "utterly meritless". Let me repeat — "utterly meritless". That's about the strongest statement a court can make.

This is not a first amendment issue. No American is limited in any way from advocating the Palestinian cause — the bill only prevents people from acting as official paid agents of the PLO — a terrorist organization that kills Americans.

It is simply a lie that this bill violates the U.S. headquarters agreement. An internal State Department memorandum admits this, yet Members of Congress and the State Department continue to spread this misinformation.

The U.N. headquarters agreement does not even contain the words "observer mission". All observer missions exist under a clause pertaining to "invitees" that was never intended to cover permanent offices or missions. All U.N. observer missions remain in New York under the courtesy of the United States and have no — zero — rights in the headquarters agreement.

Moreover, under the national security clause attached by Congress to the U.N. headquarters agreement, the United States has the right to expel any aliens from its territory if necessary for U.S. security interests.

The PLO is the world's richest and one of the world's most brutal terrorist organizations. It has killed many Americans, Israelis, and moderate Arabs around the world.

This is not just a feel good measure. Legitimacy is a terrorist organization's greatest asset. The U.S. Congress can and should strike a blow at the heart of the PLO's legitimacy by kicking the PLO out of the United States. We can begin, here and now, to banish the PLO from the world's capitols and international bodies.

The idea that the PLO, an organization who's charter demands the elimination of Israel, a member of the United Nations, is somehow protected by the U.N.'s charter or by international law, is absolutely ludicrous.

I support the anti-PLO provision and the conference report.

Ms. Snowe. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, just a final note with respect to this conference report. I would urge the Members of this House to adopt it.

It closes the PLO information offices in Washington as well as New York.

Ms. Snowe. Mr. Speaker, I want to thank the gentleman from Florida (Mr. Mica), the chairman of the Subcommittee on International Operations, for yielding me this time, and for his comments with respect to our relations with the State Department. I think it is a fact of life this year that the State Department does not recognize the legitimacy nor the principle of the authorizing language. It is unfortunate because they also think that they can spend more than $4 billion without any kind of restrictions or recognizing the role that we play in the authorizing process.

In addition, the State Department did have legitimate concerns but the 49 conferees resolved those differences and I think that certainly enhances the State Department's role.

So I would hope in the future that we can have better relations with the State Department with respect to this program. I would hope they would not recommend a veto to the President, but to remind my colleagues here in the House why they might recommend a veto to the President.

The closure of the PLO office in New York is another issue.

The Speaker *pro tempore* (Mr. Montgomery). The question is on the motion offered by the gentleman from Florida (Mr. Mica) that the House suspend the rules and agreed to the conference report on the bill, H.R. 1777.

The question was taken.

Mr. Walker. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The Speaker *pro tempore*. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were — yeas 366, nays 49, not voting 18, as follows:

[Roll No. 481]

Messrs. English, Swindall, and Lightfoot changed their votes from "yea" to "nay".

Mr. Schaefer and Mr. Hefley changed their votes from "nay" to "yea".

So (two-thirds having voted in favor thereof) the rules were suspended and the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

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(53) Adoption by the United States Senate of the Conference Report on the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989[1]

(*Congressional Record*, Vol. 133, No. 200, 16 December 1987, pp. S 18185-S 18193 and S 18198)

Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 — Conference Report

Mr. Byrd. Mr. President, the following request has been cleared with the Republican leader, Mr. Dole.

[1] Portions of the debate not relevant to the adoption of Title X have been omitted.

I ask unanimous consent that the conference report on the State Department authorization bill, H.R. 1777, be laid before the Senate.

The Presiding Officer. The report will be stated.

The legislative clerk read as follows:

> "The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1777) to authorize appropriations for fiscal years 1988 and 1989 for the Department of State, the United States Information Agency, the Voice of America, the Board for International Broadcasting, and for other purposes, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees."

The Presiding Officer. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the *Record* of December 14, 1987.)

Mr. Pell, Mr. President, I urge the Senate to approve the conference report on H.R. 1777, the Foreign Relations Authorization Act for fiscal years 1988 and 1989.

The making of this bill has been a long, drawn out, and sometimes controversial process. The final result is, however, one of which the Senate can be proud.

Let me also address two concerns expressed by the administration.

Second, the administration has expressed concern that the language on the PLO might require the closing of the Observer Mission to the United Nations in violation of U.S. obligations under international law. The bill language, as I read it, does not necessarily require the closure of the PLO Observer Mission to the United Nations, since it is an established rule of statutory interpretation that U.S. courts will construe congressional statutes as consistent with U.S. obligations under international law, if such construction is at all plausible.

The proponents of closing the PLO mission argue that the United States is under no legal obligation to host observer missions. If they are right as a matter of international law, then the language in this bill would require the closure of the PLO Observer Mission.

On the other hand, if the United States is under a legal obligation, as the host country of the United Nations to allow observer missions recognized by the General Assembly, then the language in this bill cannot be construed, in my opinion, as requiring the closure of the PLO Observer Mission. The bill makes no mention of the PLO Mission to the United Nations and the proponents never indicated an intent to violate U.S. obligations under international law. Rather, they asserted that closure of the New York PLO office was not a violation of international law and that they were proceeding on this basis.

Mr. Helms. Mr. President, I am pleased that the conference on the State Department authorization bill, H.R. 1777, has included a significant number of constructive amendments recommended by the Senate.

Mr. President, having paid my respects to the primary managers, let me outline some of the most significant aspects of the conference report. Let me start with what are reported to be the primary remaining concerns of the Department of State.

CLOSING THE PLO OFFICES IN WASHINGTON AND NEW YORK

Surely, Mr. President, one of the most significant provisions of this legislation is title X, the Anti-Terrorism Act of 1967, which requires the closing of the offices of the Palestine Liberation Organization in Washington and New York.

This provision was added to the bill on the Senate floor, where it was offered by the Senator from Iowa (Mr. Grassley). Over half the Members of the Senate cosponsored this provision and the House voted to instruct its conferees to accept this provision. Ultimately, the House conferees did vote to accept the full Senate provision, after rejecting 8 to 11, a substitute motion to require closing only the Washington office, rather than both Washington and New York.

Mr. President, there are few things in this world as ugly as terrorism. Terrorism randomly singles out totally innocent people — many times helpless children — and sentences them to violent and horrible deaths. All too often, victims are selected out only because they are Americans.

Of all the terrorist groups in the world, I don't think there is one the American people find to be more notorious than the PLO. The PLO has been directly responsible for the murder of dozens of American citizens over the past 15 years. In fact, the PLO has boasted about murdering American citizens.

Yet, despite the fact that Americans are one of the prime targets of this terrorist organization, the State Department has continued to allow the PLO to maintain official offices both in Washington and in New York, ostensibly in connection with the United Nations.

For years now, Americans have heard a stream of pronouncements from the administration about the need to get tough with terrorist groups such as the PLO. But all the State Department has given us is more of the same — accommodating terrorist groups such as the PLO and coddling terrorist nations such as Syria.

They insist that the PLO is not a terrorist organization, they refused to act to close the PLO's Washington office until Congress initiated legislation to close both Washington and New York offices, and they fought tooth and nail against the provision in the conference report precisely because it would also close the PLO's New York office.

Mr. President, there are two issues involved in the closing of the PLO's Washington and New York offices: Whether we are going to exercise our rights to stand up to terrorists, and whether we are going to exercise our rights as a sovereign nation to decide which foreign groups are entitled to privileges and immunities.

By adopting the full Senate provision, the conference wisely decided to exercise these rights.

Mr. President, I also want to note the poignant plea of the family of Navy diver Robert Stethem, who was tortured and murdered in 1985 by terrorists associated with the PLO. Now is the time to implement the President's pledge to the Stethem family, "Robbie's death will not have been in vain". I ask unanimous consent that the article be printed in the *Record*.

There being no objection, the article was ordered to be printed in the *Record*, as follows:

[From the *Washington Times*, Nov. 6, 1987]

FRIDAY FORUM — A FAMILY'S PLEA TO CLOSE PLO OFFICES

In July 1985, President and Mrs. Reagan visited Arlington National Cemetery to pay their respects to Robert Stethem, the U.S. Navy diver who was tortured and murdered by terrorists of the hijacked TWA Flight 847.

We'll never forget how the first couple pledged their support in bringing Robbie's killers to justice. "Be strong, be patient", they said, "Robbie's death will not have been in vain". Over the past 2½ years, the optimism for judicial retribution for Robbie's death that once guided our family has all but dissipated.

We have all heard strong words regarding our government's stance against terrorist organizations. Yet the emissaries of the Palestine Liberation Organization terror are permitted to operate within the shadow of the White House and the U.S. sponsored United Nations.

Members of the House and Senate have proposed legislation to close the PLO "information" offices in Washington, D.C. and New York. However, the legislation — H.R. 2587 and S.1203 — has met with debate.

Why?

It seems ludicrous that all our legislators would not jump at the opportunity to take a forceful stand against international terrorist organizations.

It is no secret that the PLO terror of the 1970s and 1980s, in which air piracy and the slaughter of innocent civilians was elevated to a practiced art, set the stage for the recent episodes of fanatical terror. It also is no secret that the PLO offices which are permitted to operate in Western Europe have served as fund raising bases and "safe houses" for the PLO and its terrorist operatives.

While the ringmasters of Shi'ite terror remain elusive, safely ensconced in Lebanon, Iran and other foreign countries, the emissaries of PLO terror are permitted to operate within the boundaries of the United States of America. Hezbollah, the "Party of God" — responsible for the TWA Flight 847 hijacking, the kidnapping of Americans in Beirut and many other terrorists acts — and the PLO — which in April reintegrated the so-called "radicals" under Yasser Arafat's leadership and reaffirmed the organization's terrorist policy — continue to operate with virtual impunity.

Since President Reagan took office in 1981, the United States and other Western nations have been targets for innumerable acts of international terror. Many studies show collaboration between the radical PLO and extremist Shi'ite organizations. One incident of PLO and Shi'ite collusion was the April 1985 bombing of a Madrid restaurant frequented by innocent American servicemen like Robbie. Eighteen people died in that bombing episode, which linked PLO involvement alongside the Islamic Jihad, the group which ultimately took credit for the criminal act.

Now is a golden opportunity for our legislators to seize the initiative, take a stand against international outlaws, and recoup some of our country's lost prestige. It's time to set an example for Western leaders and show the world that the United States of America is deadly serious about the war against terrorism.

We believe that the will of American citizens, through this legislation, demands that our senators and representatives act decisively and expeditiously to close PLO-financed outlets which promulgate PLO terrorist policies. How many more American citizens must feel such loss, hurt and pain before all elected officials act forcefully?

Robbie suffered an extremely painful death. Alone and bleeding he was left to die on the airport runway in a foreign country. Young marines have been burned alive far away from home and families. An elderly gentleman was shot and thrown overboard, helpless to survive. Are we to allow the PLO representatives to get a foothold on our soil? Are we to allow them to continue working, living and enjoying American freedoms and our way of life and at the same time, finance terror and PLO policies?

We say, "No!"

Sherry Stethem,
Patricia Stethem,
Richard L. Stethem,
Waldorf, MD.

TERRORISM REPORT

Mr. President, as I noted previously, there are acts as ugly as terrorism. Unfortunately, international terrorism has proven a difficult force to combat.

An important step in combating terrorism is to identify from where terrorist groups are receiving financial, military and other assistance. With this in mind, the conference report, section 140, includes a provision calling for an annual report on terrorist groups, and the countries from which they received support. Among the groups to be reported on are the PLO, the PFLP, Abu Nidal, Saiqwa, the DFLP, the Red Army Faction, and the Red Brigade.

The Palestine Liberation Organization (PLO). — The Palestine Liberation Organization was founded in the late 1960s and is the umbrella group for approximately 10 Palestinian terrorist factions.

During the 1970s, the PLO was involved in numerous hijackings and in the early 1980s, aside from attacking civilians in Israeli cities, it also attacked school nurseries and civilian buses. Recently, it took credit for the grenade attack at Israel's holiest site — the Wailing Wall.

It was responsible for the attack on the *Achille Lauro* steamship and for the murder of an American citizen, Leon Klinghoffer, who was confined to a wheelchair. Earlier this year, it tried to infiltrate a small group into Israel for the purpose of seizing civilian hostages at an Israeli kibbutz.

Abu Nidal. — Its official name is Fatah (Fah-tah) — the Revolutionary Council. It also has used several other names, including Black June and Arab Revolutionary Brigades.

When it attacks Arab targets, it uses the name Black September. When it attacks British targets, it calls itself the organization of Socialist Muslims.

It is headquartered in Syria. It was responsible for the hijacking of an Egypt Air commercial jetliner which resulted in a tragic shootout in Malta in November 1985. It also played the primary role in the massacres at the Rome and Vienna international airports in January 1986, where more than 20 persons were killed. It apparently was responsible for the September 1987 massacre of Jewish worshippers at an Istanbul synagogue.

The Red Army Faction. — A West German Radical Marxist group that has specialized in bombings directed against American military targets, kidnapings and executions of West German civilians and government officials, and attempted assassinations of United States military officers.

The Red Army Faction has ties with French and Belgian terrorist groups as well as with the Italian Red Brigade.

The Popular Front for the Liberation of Palestine (PFLP). — Headed by the notorious Dr. George Habash. In the early 1980s the PFLP carried out attacks in Europe against Israeli and European civilian targets, including attacks on the embassies in Vienna and Athens, and bombings of airline offices in Italy and Turkey.

It also claimed responsibility for the bombing of a Cypriot cruise ship in the Haifa Harbor. It is believed to be responsible for the bombing of a Brussels synagogue in October 1981.

The Red Brigade. — Italy's longest-lived and most notorious terrorist group, responsible for the kidnaping and execution of former Italian Premier Aldo Moro and the kidnaping of American General James Dozier.

In 1981, in addition to kidnaping General Dozier, the Red Brigades were responsible for three kidnapings, several bombings and murders, and one bank robbery. In 1985, it murdered a prominent Italian labor economist.

It has also been responsible for the murder and serious bodily harm of a

number of Italian newspapermen, judges, and security personnel. In 1987, it resumed its pattern of assassination of government targets.

PLO OFFICE CLOSING

Mr. President, I noted earlier the strong Senate support for the PLO office closing provision. It is clear that the State Department is totally misreading the American people. The fact that this provision has so much support in Congress is one indication, a poll which recently ran in *Newsweek* is another. The poll asked respondents what they thought to be the most important issue for the United States and the Soviet Union to discuss at the recent summit.

The most important issue for Americans was not nuclear weapons, or conventional arms, or even human rights. The most important issue was "international terrorism", with 86 percent of respondents saying it was "very important".

The poll shows how concerned the American public is about terrorism, and terrorist groups such as the PLO. But it also indicates that the public recognizes a point the State Department continually downplays: That the Soviet Union is behind, or assists, a good deal of international terrorism.

Mr. President, I ask unanimous consent that the poll which ran in the *Newsweek* of December 7, 1987, be printed at this point in the *Record*:

There being no objection, the poll was ordered to be printed in the *Record*, as follows:

Summit Issues: A United States Soviet Poll

On the eve of the summit, a comparative sampling of public opinion in the United States and the Soviet Union shows broad agreement on the importance of arms control. Soviet citizens, however, are more optimistic about the chances of actually eliminating nuclear weapons.

TELL ME HOW IMPORTANT YOU FEEL IT IS FOR THE UNITED STATES AND SOVIET UNION TO DISCUSS THE FOLLOWING ISSUES AT THE SUMMIT

[In percent]

	Very important	Somewhat important	Not so important
Limiting strategic or long-range nuclear weapons:			
United States	78	16	4
U.S.S.R.	86	12	1
Reductions in medium-range and tactical nuclear missiles:			
United States	69	21	6
U.S.S.R.	82	15	1
Cutting down on conventional arms:			
United States	48	31	13
U.S.S.R.	46	40	8
International Terrorism:			
United States	86	8	3
U.S.S.R.	49	34	5

	Very important	Somewhat important	Not so important
The star war project:			
United States	55	27	10
U.S.S.R.	88	9	1
Erasing regional tensions and conflicts:			
United States	70	20	3
U.S.S.R.	67	28	2
Expanding economic links:			
United States	61	28	6
U.S.S.R.	53	43	2
Human rights in both countries:			
United States	78	16	5
U.S.S.R.	49	33	9
Expanding people-to-people contacts:			
United States	71	21	5
U.S.S.R.	64	32	2
A total nuclear test ban:			
United States	71	19	7
U.S.S.R.	84	12	1

Mr. Helms. During consideration by the committee of conference, it was suggested that the provision infringed upon the constitutional rights of the PLO and its supporters.

However, there is simply no first amendment issue involved in closing these offices. The provision adopted by the conference does not compromise the rights of American citizens to speak on behalf of the PLO, its policies, or its positions. Furthermore, Americans would not be prohibited from donating legal assistance to the PLO, nor from making monetary contributions to the organization.

Rather, the provision prohibits the PLO from maintaining offices and transacting business in this country. I might point out, that a foreign entity, the PLO is not entitled to first amendment protections.

In fact, during the time the conference was meeting, a U.S. District Court issued an opinion on the PLO's objection to the State Department ordering their Washington office closed. The court held that the constitutional claims of the PLO do not rise to the level necessary to implicate first amendment concerns.

Mr. President, I ask unanimous consent that a *New York Times* article of December 3, 1987, discussing this decision be printed in the *Record* at this point.

There being no objection, the article was ordered to be printed in the *Record*, as follows:

[From the *New York Times*, Dec. 3, 1987]

Rebuff to Palestinians is Upheld

Washington, December 2 (AP). — A Federal District Court judge today upheld a State Department order closing an information office connected to the Palestine

Liberation Organization, rejecting claims that shutting it down was unconstitutional.

The judge, Charles R. Richey, said that Secretary of State George P. Shultz "acted lawfully" in determining that the Palestine Information Office "is a 'foreign mission' of the PLO", that could be ordered closed under the Foreign Missions Act.

The State Department, citing involvement in terrorism by "individuals and organizations associated with the PLO", had ordered the office in Washington to be closed by December 1, but postponed the deadline until Thursday to give Judge Richey time to rule on the challenge, by the American Civil Liberties Union.

The A.C.L.U. said that closing the office would violate First Amendment guarantees of free speech and assembly and that the office had a legal right to function because it was a lobbying office staffed by American citizens.

"The Secretary's order merely prohibits the PLO from operating as a 'foreign mission' " of the PLO, Judge Richey said in a 16-page opinion. Nothing prohibited the staff of the office from continuing to engage in political activity for Palestinians, he said.

Hope Nakamura, an A.C.L.U. lawyer, said the group would appeal.

Mr. Helms. But perhaps the main issue of contention in the conference in regard to this provision involved the question of closing the New York office. During consideration of this provision, a motion was made by Representative Frank to recede to the Senate position with an amendment to delete the Senate language closing the PLO's New York office. Representative Frank's motion was defeated by a vote of 11 to 8 among House conferees.

The House conferees were wise to reject this amendment. During the conference, the State Department representatives insisted that closing the PLO's New York office would constitute a violation of international law. However, it is apparent that the State Department's own internal legal memorandum differs from this assessment.

Specifically the press has reported that the memorandum acknowledges that the PLO maintains its office in New York as a courtesy of the United States and not as a legal right.

It is unfortunate that the State Department continues to refuse to declassify this memorandum. However, a wire story published by AP on November 4, 1987, gives some insights into the content of this memorandum.

Mr. President, I ask unanimous consent that this AP wire story be inserted in the *Record* at this point.

There being no objection, the wire story was ordered to be printed in the *Record* as follows:

State Department calls shutting down PLO office impractical

(By Barry Schweid)

Washington (AP). — The State Department has concluded that the Palestine Liberation Organization maintains an office in New York thanks to American courtesy and not as a legal right, but that trying to close it would be impractical.

The analysis, obtained Monday by the Associated Press, could have an impact on Congress. Majorities in the House and Senate have voted to evict the PLO, but the action is not final.

The 25-page document, which traces the history and legal status of permanent observer missions to the United Nations, will be considered by Congressional

conferees Thursday along with anti-PLO amendments to the State Department's Authorization Bill.

The United Nations granted the PLO permanent observer status in 1973. The PLO is not recognized by the United States and it has been implicated in acts of terrorism against Americans and Israelis.

At the same time, it enjoys diplomatic status in a number of other countries and is recognized by the Arab League as the sole legitimate representative of the Palestinian people.

On September 15, the State Department gave the PLO 30 days to close its information office in Washington, but subsequently extended the deadline for 45 days to allow the office to settle its affairs.

The punitive action was taken "to demonstrate the United States' concern over terrorism conducted and supported by organizations affiliated with the PLO", Charles F. Redman, the department spokesman, said in the announcement.

However, the New York office was permitted to remain open.

Both the Senate and House have enacted legislation to close the office, as well. The chief-sponsors are Reps. Jack Kemp, R.-N.Y., and Dan Mica, D-Fla., in the House, and Sens. Charles F. Grassley, R.-Iowa, and Frank R. Lautenberg, D-N.J., in the Senate.

According to the analysis, the U.S. agreement with the United Nations to establish its headquarters in New York did not specifically deal with permanent U.N. observers.

The paper said the United States has never "acknowledged an international legal obligation to accord privileges and immunities to observer missions".

The institute of permanent observer "rests purely on practice" and "permanent observers are not entitled to diplomatic privileges and immunities", the analysis said.

Since PLO officials are not on the U.S. diplomatic list, the analysis continued, any facilities they may be given in this country "are merely gestures of courtesy".

In fact, the analysis said, "As a matter of principle, the U.S. Government, as host country, can argue that it should not be obligated to accord observer missions privileges and immunities that it has not expressly agreed to provide".

However, the paper said, "In light of the practice of both the United Nations and the U.S. Government it is not practical for the U.S. Government to take such a position at this time".

Without explanation, the analysis returned to the point again. "As a practical matter", it said, "it is too late to challenge the institution of permanent observer missions or the extension of that institution to non-governmental organizations like the PLO".

The order to close the Washington office was challenged by Arab-American groups and some civil libertarians who said it conflicted with the Constitution's free speech guarantees.

The analysis quotes a classified FBI report as saying, "The investigation has clearly shown that Chairman Yassar Arafat directs the activities of the PLO Information Office and has given his personal approval and guidance over its activities since it opened in 1977."

Mr. Helms. Mr. President, it is unfortunate that the State Department continues to make this important legal memorandum unavailable to the public. The legal issues involved in closing the New York office are complex, and I am certain that this memorandum would help the Congress and the public better understand our rights under international law. I am informed by knowledgeable sources who know of the memorandum that the AP story is accurate in its description.

While the State Department continues to keep its own legal memorandum under wraps, the Senate was indeed fortunate to hear the Senator from Iowa [Mr. Grassley], whom I may point out is a member of the Judiciary Committee, provide an excellent analysis of the legal issues involved in closing the PLO's New York office.

In his speech, the Senator points out how closing the PLO's office is entirely within our Nation's obligations under international law. Indeed, the speech framed the issues involved in this matter so clearly, that this Senator felt compelled to share it with all of the members of the conference.

Mr. President, I ask unanimous consent that a copy of the letter from the Senator from North Carolina, and the statement of the Senator from Iowa be printed in the *Record* at this point.

There being no objection, the material was ordered to be printed in the *Record*, as follows:

U.S. Senate, Committee on Foreign Relations

Washington, D.C., November 4, 1987

Hon. Dan Mica,
U.S. House of Representatives,
Washington, D.C.

Dear Dan: As you are no doubt aware, one of the more controversial items we will cover in the Conference on the State Department Authorization Bill is the Senate provision closing the offices of the PLO in Washington and New York.

Over half the Senate cosponsored this provision authored by Senators Grassley and Lautenberg. The House subsequently approved a motion to instruct their conferees to accept the Senate language.

I understand, however, that despite such indications of support for the Senate provision, an effort will be undertaken to strike all Senate language pertaining to the PLO office in New York.

I hope you will join me in persuading our fellow conferees to retain the Senate language. Towards this end you may find the information in the enclosed statement by Senator Grassley to be of help. It notes how Congressional legislation to close the New York office is entirely consistent with international law.

In addition, I have taken the liberty of enclosing a reprint of a story from the AP wire. It discusses the State Department's own internal legal memorandum which acknowledges that the PLO maintains its office in New York as a courtesy of the United States and not as a legal right — despite recent State Department pronouncements to the contrary.

I hope you will find these documents to be of use. I will look forward to working with you at the Conference on this and other items.

Sincerely,

Jesse HELMS.

The Antiterrorism Act of 1987

Mr. Grassley. Mr. President, I want to bring to the attention of my colleagues and the American people an issue that is currently the subject of a great deal of debate among members of the conference committee to the State Department authorization bill.

The issue involves an amendment to State authorization that I sponsored to

close the Palestine Liberation Organization offices in the United States until the PLO renounces its policy of terrorism. The amendment, known as the Antiterrorism Act of 1987, has 50 Senate cosponsors as a free-standing bill.

At this time, our State Department is bowing to pressure from the United Nations and is lobbying members of the conference committee arguing that closing the PLO observer mission at the United Nations may conflict with treaty obligations the United States has with U.N. members.

The battle going on over the Antiterrorism Act is really a battle over two extremely important principles. The first principle is that the United States has a sovereign right and obligation to protect its territory and citizens from terrorism. The second principle involves the absolute requirement that before the United States can be bound to a new provision of a treaty or a new interpretation of a treaty provision, the United States must affirmatively agree to that new provision or interpretation.

Mr. President, there is little or no argument that the PLO is invoived in terrorism, and that the United States has the right to act accordingly. One only has to look at the recent elevation of Abbul Abbas to the PLO's executive council to be reminded of the PLO's politics of terror. Abbul Abbas, of course, is wanted in connection with the *Achille Lauro* hijacking and the murder of an American citizen, Leon Klinghoffer.

Nevertheless, U.N. officials, through reinterpreting U.S. treaty obligations, argue that the PLO observer mission should have the same privileges and immunities that member States have at the United Nations. In other words, the PLO should be equal to a sovereign government whose office is inviolable under the Charter, and therefore, cannot be closed by the United States even to protect its own territory and people.

Mr. President, there is absolutely nothing in the written agreements between the United States and the United Nations that expressly provides for observer missions. Nevertheless, the United Nations is attempting to force treaty obligations on the United States that have never even been negotiated, let alone ratified by the Senate, and our State Department is bowing to the pressure.

However, despite the State Department's questionable conduct, the United States, up to this point, has never formally acknowledged an international legal obligation to accord the privileges and immunities to members of observer missions beyond the specific requirements in the headquarters agreement relating to entry, residence, and transit.

Historically, the United Nations had a very restrictive view of what privileges and immunities were accorded to observer missions. A 1962 U.N. Legal Counsel memorandum stated the following:

Permanent Observers are not entitled to diplomatic privileges and immunities under the Headquarters Agreement or other statutory provisions of the host State. Those among them who form part of the diplomatic missions of their Governments to the Government of the United States may enjoy immunities in the United States for that reason. If they are not listed in the United States diplomatic list, whatever facilities they may be given in the United States are merely gestures of courtesy by the United States authorities.

This narrow interpretation continued until observer status was given to the PLO in 1974. Since then, the United Nations, over U.S. objections, has steadily attempted to unilaterally extend powers and privileges to observer missions. For example, the General Assembly adopted the so-called 1975 Vienna Convention over U.S. opposition. The convention would have given observer missions the same rights accorded to permanent missions. The United States has never signed the convention, and therefore, cannot be bound to its terms.

Nevertheless, the U.N. Legal Counsel has attempted to bind the United States to the spirit, if not the letter, of the convention by reinterpreting the U.N. Charter. In 1982, the U.N. Legal Counsel attempted to expand the interpretation of Article 105 to include the inviolability of observer missions. However, there is absolutely nothing in Article 105 or the headquarters agreement that even mentions observer missions let alone any obligations that the United States owes to them.

So, Mr. President, what exactly is the problem? The problem is that even though the United States has never actually agreed to a reinterpretation of the U.N. Charter that would extend full privileges and immunities to the PLO observer mission, the United Nations is on the verge of successfully forcing the United States into such an agreement with no negotiation and no Senate ratification.

What makes these events even more incredible is the fact that the State Department is feebly acquiescing to this force, contrary to an internal State Department memorandum of last April. According to this internal memorandum, State Department officials should "refuse to recognize an obligation to accord inviolability to the premises of an observer mission ...". Unfortunately, those in charge at our State Department have disregarded this advice and instead refused to protect or promote American interests in this matter.

Mr. President, State Department bureaucrats may sit by and let American rights be tossed out the door, but this Senator is going to do everything he can to stop such a blatant usurpation of American sovereignty.

As I have stated, the battle over this policy of forfeiting American interests at the United Nations, in regard to observer missions, is a subject of debate this week among the conferees to the State Department authorization bill. The debate centers on the Antiterrorism Act amendment which, as I noted earlier, will close the PLO observer mission until the PLO renounces its policy of terrorism. Of course the U.N. hierarchy has been arm-twisting the State Department bureaucracy into lobbying against the amendment.

I would like to remind my colleagues on the conference committee that even if the State Department isn't willing to defend U.S. rights in this matter, the Congress has the power and the obligation to do so. Notwithstanding U.N. interpretations of U.S. treaty obligations, Congress has the constitutional authority to modify those interpretations through legislation. In fact, according to the landmark case of *Whitney* v. *Robertson*, Congress even has the power to modify binding treaty obligations. Therefore, Congress has the authority to define, on our own terms, what obligations are owed to the PLO.

Mr. President, we are at a crucial point in our battles to promote U.S. principles of protecting American sovereignty and putting an end to terrorism. Congress can follow the State Department line and watch these principles collapse, or Congress can adopt the Antiterrorism Act and ensure the protection and preservation of these principles.

Mr. President, I yield back the remainder of my time.

Mr. Helms. Mr. President, I also ask unanimous consent that the following summary of record votes taken during the conference be included in the *Record* at this point.

There being no objection, the material was ordered to be printed in the *Record* as follows:

Summary of Record Votes Taken During the Conference on HR 1777 and the Senate Amendment Thereto

On December 3, the House conferees, defeated, 8-11, an amendment by Rep. Frank to the pending motion by Rep. Mack regarding the offices of the Palestine

Liberation Organization. The Frank amendment proposed to close only the Washington office of the PLO ; the Mack motion to recede to the Senate's title XI encompassed closing both the Washington office and the New York office. Ayes: Dymally, Kostmayer, Atkins, Rodino, Mazzoli, Hughes, Frank, Fish (by proxy). Nays: Fascell (by proxy), Mica, Smith of Florida (by proxy), Broomfield (by proxy), Snowe, Gilman, Mack, DeWine (by proxy), McCollum, Swindall (by proxy), (Mr. Yatron was later recorded in the negative). Subsequently, the House conferees, adopted by voice vote the Mack motion to recede to the Senate's title XI. [See conference substitute title X.]

The Presiding Officer. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. Byrd. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. Symms. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. Byrd. Mr. President, I thank all Senators.

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(54) Statement Made by a Member of the United States Congress on the "Anti-Terrorism Act of 1987" Adopted by Both Houses of Congress

(*Congressional Record*, Vol. 133, No. 202, 18 December 1987, pp. H 11684-H 11685)

Congressional Vote to Close Palestine Liberation Organization's UN Observer Mission

Mr. Burton of Indiana. Mr. Speaker, I think everybody in the United States knows that the Palestine Liberation Organization is a terrorist organization that kills not only Israelis and Americans but its own people.

Mr. Speaker, this body and the other body passed in the State Department authorization bill an amendment which would kick the PLO observer mission out of the United States of America, out of New York, out of Washington, D.C. It passed overwhelmingly.

This week it was announced that the United Nations condemned the passage of that legislation. That is to be expected. The United Nations does not support us very much anyhow.

But the thing that was the most deplorable about that action was that our delegation, our State Department delegation over there did not vote. They said they did not vote because the bill was still in progress.

The fact of the matter is the State Department is trying to get the President to pocket veto this legislation even though the Congress overwhelmingly expressed its sentiment toward the PLO.

Mr. Speaker, I think this body ought to send the State Department a message to do what we ask them to do when we vote overwhelmingly on a measure like this.

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(55) Statement by the President of the United States upon Signing the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989

(*United States Code Congressional and Administrative News, 100th Congress — First Session*, No. 12, February 1988, p. 2453)

Statement by President Ronald Reagan upon Signing HR 1777

23 Weekly Compilation of Presidential Documents 1547, December 28, 1987

I have today signed HR 1777, the "Foreign Relations Authorization Act, Fiscal Years 1988 and 1989". Certain issues raised by its provisions, however, require comment.

. . . . . .

Section 1003 of the Act prohibits the establishment anywhere within the jurisdiction of the United States of an office "to further the interests of" the Palestine Liberation Organization. The effect of this provision is to prohibit diplomatic contact with the PLO. I have no intention of establishing diplomatic relations with the PLO. However, the right to decide the kind of foreign relations, if any, the United States will maintain is encompassed by the President's authority under the Constitution, including the express grant of authority in Article II, section 3, to receive ambassadors. I am signing the Act, therefore, only because I have no intention of establishing diplomatic relations with the PLO, as a consequence of which no actual constitutional conflict is created by this provision.

. . . . . .

Part II. Materials Relevant to the Observer Status of the Palestine Liberation Organization

1. Permanent Observers of Non-member States

(56) List of States Which Still Maintain or Had Maintained Permanent Observer Offices at the Headquarters of the United Nations [1]

Austria (1949-1955).
Bangladesh (1972-1974).
Democratic People's Republic of Korea (1973 to present).
Finland (1952-1955).
Germany, Democratic Republic of (1972-1973).
Germany, Federal Republic of (1952-1973).
Guinea-Bissau (1974).
Holy See (1964 to present).
Italy (1949-1955).
Japan (1952-1955).
Monaco (1956 to present).
Republic of Korea (1949 to present).
Republic of Vietnam (1952-1977).

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[1] Not an exhaustive list.

San Marino (1987 to present).
Spain (1953-1955).
Switzerland (1948 to present).
Vietnam, Democratic Republic of (1975-1977).

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(57) Statement by the Legal Counsel, 92nd Meeting, 14 October 1982, Committee on Host Country Relations

The Scope of Privileges and Immunities of the Permanent Observer Mission of the Democratic People's Republic of Korea to the United Nations

1. *The institution of Permanent Observer Missions.* Although the Charter of the United Nations makes no provision for observers of non-member States, the institution of Permanent Observers of non-member States in United Nations practice may be traced to the designation by Switzerland in 1946 of a permanent observer. This practice, which from a formal point of view is based on an exchange of letters between the non-member State and the Secretary-General, was subsequently followed by many other non-member States and the institution of Permanent Observer Missions has developed correspondingly. The need to codify this practice led to a study of the topic by the International Law Commission and to the eventual adoption of a United Nations Convention on the Representation of States in Their Relations with International Organizations in 1975.

2. *The evolution of the legal basis of the institution of Permanent Observer Missions.* Because the institution of Permanent Observer Missions is one which has developed essentially through practice, the legal status, privileges and immunities of such missions has evolved gradually. Despite the fact that there are no specific provisions relating to Permanent Observer Missions in the Charter, the Headquarters Agreement or the Convention on the Privileges and Immunities of the United Nations, as long as the non-member States concerned enjoyed bilateral diplomatic or consular relations with the host country no particular problems arose. The Permanent Observer Missions and their individual members were accorded diplomatic or consular privileges and immunities on a reciprocal basis. As early as 1962 the Office of Legal Affairs stated in a legal opinion that while Permanent Observers are not entitled to diplomatic privileges in the host State, those among them who form part of the diplomatic missions of their governments to the Government of the United States may enjoy immunities in the United States for that reason (Memorandum to the Acting Secretary-General from the Office of Legal Affairs, document ST/LEG/8, 22 August 1962). The development and broadening of the institution, which by the early 1970s included a number of intergovernmental organizations such as the European Economic Community and the Council for Mutual Economic Assistance, led the Office of Legal Affairs to elaborate further on the legal status of such missions resulting in the conclusion that Permanent Observer Missions were entitled to functional privileges and immunities.

3. *The basis for the functional privileges and immunities of Permanent Observer Missions.* In January 1975 the Legal Counsel was requested to set out his views concerning the privileges and immunities to which representatives of the Council for Mutual Economic Assistance (CMEA) would be entitled in the United States, as host State to the Headquarters of the United Nations, in the light of General Assembly resolution 3209 (XXIX) which requested the Secretary-General to invite the CMEA to participate in the sessions and work of the General Assembly in the

capacity of observer. After pointing out that the representatives of the CMEA would benefit from certain provisions of the Headquarters Agreement, namely sections 11, 12 and 13, the Legal Counsel went on to say:

> "In addition to the foregoing privileges and immunities, it is my belief that it necessarily follows from the obligations imposed by Article 105 of the Charter of the United Nations that a CMEA delegation would enjoy immunity from legal process in respect of words spoken or written and all acts performed by members of the delegation in their official capacity before relevant United Nations organs." (*United Nations Juridical Yearbook 1975*, p. 157.)

In 1976 the Legal Counsel was called upon once again to state his position with regard to the privileges and immunities of a Permanent Observer of an intergovernmental organization. In this case the Legal Counsel stated that:

> "The Permanent Observer, as an invitee to meetings of certain United Nations organs, enjoys in this capacity, in the Secretary-General's view, functional immunities necessary for the performance of his functions. While these immunities are not spelt out in detail in the Headquarters Agreement, or the Convention on the Privileges and Immunities of the United Nations, they flow by necessary intendment from Article 105 of the Charter. It can be argued with considerable cogency that such functional immunities, to have any real substance, should include inviolability for official papers and documents relating to an observer's relations with the United Nations." (*United Nations Juridical Yearbook 1976*, p. 229.)

The foregoing legal opinions represented the views held by the Office of Legal Affairs in the light of the practice which had developed since 1946 and taking into account the provisions of the Charter of the United Nations and the Headquarters Agreement. In the meantime, however, the United Nations conference on the Representation of States in their Relations with International Organizations had considered and adopted a convention codifying the law regarding the representation of States in their relations with international organizations. The Vienna Convention of 1975 contains provisions dealing with missions to international organizations, delegations to organs and to conferences and observer delegations to organs and to conferences. Part II of the Convention incorporates provisions dealing with permanent missions of both member States and non-member States. Article 5, paragraph 2, provides that non-member States may, if the rules of the organization so permit, establish permanent observer missions for the performance of the functions of the permanent observer mission. For all practical purposes the status, privileges and immunities of permanent observer missions, as well as their diplomatic staff, is assimilated to that of permanent missions of member States, including the inviolability of the premises of the mission and the personal inviolability of the members of the diplomatic staff of the mission. The Convention on Representation of States is not yet in force and in view of the fact that a number of States, mainly host countries of international organizations, either abstained or voted against the Convention, it would not be correct to rely on the Convention as a statement of the accepted customary international law in the matter. Nevertheless, it may be pointed out that a very large number of States voted in favour of the convention which goes well beyond the functional view which has been espoused by the Office of Legal Affairs.

4. *The necessity for and scope of the functional immunity of Permanent Observer Missions.* The foundation of the functional view consistently advanced by the Office of Legal Affairs is Article 105 of the United Nations Charter. This

provision establishes in general terms the principle that the Representatives of Members shall enjoy the privileges and immunities necessary for the independent exercise of their functions. The Charter as a constituent instrument, did not, of course, spell out these privileges and immunities but left it to the General Assembly to determine the specific details of the application of the principle. The principle is clear and, as the legal opinions cited above state, it flows by necessary intendment from Article 105 that regardless of the detailed application of Article 105 by the General Assembly, certain minimum privileges and immunities are inherent to the Organization and its Members without which it would be unable to function independently. Such functional privileges and immunities clearly extend to the institution of Permanent Observer Missions which, as we have seen, has developed in practice and which has been codified in the 1975 Vienna Convention. The Charter of the United Nations, while making no express reference to Permanent Observer Missions of non-member States, nevertheless contains a number of provisions creating rights or obligations for non-member States. It was, therefore, contemplated that such States may be brought into relationship with the Organization and that appropriate legal arrangements governing such relationship would be made.

Furthermore, non-member States of the United Nations are sovereign States and they generally are members of other intergovernmental organizations within the United Nations system. The Democratic People's Republic of Korea is a member of FAO, Unesco, WHO, UPU, ITU, WMO, WIPO, ICAO and the IAEA. In its capacity as a member of these agencies, in those host countries, it enjoys *de lege lata* the privileges and immunities which are set out in the relevant constituent instruments as well as the relevant host country agreements.

If, as has been argued in the 1975 and 1976 legal opinions, inter-governmental observers enjoy functional immunity then *a fortiori* such immunity must also be enjoyed by States. Such immunity must extend to immunity from legal process in respect of words spoken or written and all acts performed by members of the mission in their official capacity before relevant United Nations organs as well as inviolability for official papers and documents relating to an observer's relations with the United Nations. If such inviolability is to have any meaning it necessarily extends to the premises of the mission and the residences of its diplomatic staff.

2. Permanent Observers of Intergovernmental Organizations

(58) List of Intergovernmental Organizations Having Received a Standing Invitation to Participate in the Sessions and the Work of the General Assembly as Observers

Organization of American States: General Assembly resolution 253 (III) of 16 October 1948.

League of Arab States[1]: General Assembly resolution 477 (V) of 1 November 1950.

Organization of the Islamic Conference[1]: General Assembly resolution 3369 (XXX) of 10 October 1974.

Organization of African Unity[1]: General Assembly resolution 2011 (XX) of 11 October 1965.

European Economic Community[1]: General Assembly resolution 3208 (XXIX) of 11 October 1974.

Council for Mutual Economic Assistance[1]: General Assembly resolution 3209 (XXIX) of 11 October 1974.

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[1] Currently maintaining a permanent office at Headquarters.

Commonwealth Secretariat: General Assembly resolution 31/3 of 18 October 1976.
Agency for Cultural and Technical Co-operation: General Assembly resolution 33/18 of 10 November 1978.
Asian-African Legal Consultative Committee[1]: General Assembly resolution 35/2 of 13 October 1980.
Latin American Economic System: General Assembly resolution 35/3 of 13 October 1980.
African, Caribbean and Pacific Group of States: General Assembly resolution 36/4 of 15 October 1981.
African Development Bank: General Assembly resolution 42/10 of 28 October 1987.

Statements by the United Nations Secretariat as to the legal status of permanent observers of intergovernmental organizations[2]

(59) Privileges and immunities to which representatives of the Council for Mutual Economic Assistance would be entitled in the United States as host State to the Headquarters of the United Nations in the light of General Assembly resolution 3209 (XXIX) (*United Nations Juridical Yearbook 1975*, p. 157)

(60) Privileges and immunities of a person designated by a Member State as a "member of its permanent mission to the United Nations with ambassadorial rank" — automatic entitlement to diplomatic privileges and immunities of persons referred to in section 15, paragraphs 1 and 2, of the Headquarters Agreement of the United Nations — the reference in section 15, paragraph 2, of the Agreement to persons "agreed upon between the Secretary-General" and the host State refers to classes of persons and not to individuals — entitlement of representatives of Member States to diplomatic privileges and immunities of the United Nations — interpretation of the phrase in that section "while exercising their functions and during their journey to and from the place of meeting" — status of the permanent observer to the United Nations of an intergovernmental organization granted observer status by the General Assembly (*United Nations Juridical Yearbook 1976*, pp. 224-229)

(61) Guidelines for implementation of General Assembly resolutions granting observer status on a regular basis to certain regional intergovernmental organizations, the Palestine Liberation Organization and the national liberation movements in Africa (*United Nations Juridical Yearbook 1975*, pp. 164-167)

[1] Currently maintaining a permanent office at Headquarters.
[2] Documents not reproduced. *[Note by the Registry.]*

3. Permanent Observers of Other Entities

(62) List of Organizations Having Received a Standing Invitation to Participate in the Sessions and the Work of the General Assembly as Observers and Maintaining Offices at the United Nations Headquarters

1 Palestine Liberation Organization, General Assembly resolution 3237 (XXIX) of 22 November 1974.

2 South West Africa People's Organization, General Assembly resolution 31/152 of 20 December 1976.

Legislative authorities relating to the PLO

(63) Resolution 3102 (XXVIII). Respect for Human Rights in Armed Conflicts, adopted by the General Assembly on the report of the Sixth Committee, twenty-eighth session, 12 December 1973[1]

(64) Resolution 1835 (LVI). Population Question, adopted by the Economic and Social Council, on the report of the Economic Committee, fifty-sixth session, 14 May 1974[1]

(65) Resolution 1840 (LVI). Preparations for the World Food Conference, adopted by the Economic and Social Council, on the report of the Economic Committee, fifty-sixth session, 15 May 1974[1]

(66) Resolution 3237 (XXIX). Observer Status for the Palestine Liberation Organization, adopted by the General Assembly, twenty-ninth session, 22 November 1974[1]

(67) Official Records of the 2296th meeting of the General Assembly, 22 November 1974. Agenda item 108: Question of Palestine[1]

(68) Resolution 3375 (XXX). Invitation to the Palestine Liberation Organization to Participate in the Efforts for Peace in the Middle East, adopted by the General Assembly, thirtieth session, 10 November 1975[1]

(69) Decision 129 (LIX). Participation of a National Liberation Movement in the Work of the Council, adopted by the Economic and Social Council, fifty-ninth session, 3 July 1975[1]

(70) Resolution 2089 (LXIII). Annual Report of the Economic Commission for Western Asia, adopted by the Economic and Social Council, sixty-third session, 22 July 1977[1]

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[1] Document not reproduced. *[Note by the Registry.]*

(71) Security Council, 1975, Decision Adopted at the 1856th Meeting on 4 December 1975

At its 1859th meeting, on 4 December 1975, the Council decided to invite the representatives of Lebanon, Egypt and the Syrian Arab Republic to participate, without vote, in the discussion of the item entitled:

"The situation in the Middle East:

(a) Letter dated 3 December 1975 from the Permanent Representative of Lebanon to the United Nations addressed to the President of the Security Council (S/11892);

(b) Letter dated 3 December 1975 from the Permanent Representative of Egypt to the United Nations addressed to the President of the Security Council (S/11893)."

At the same meeting the Council also decided, by a vote, that an invitation should be accorded to the Palestine Liberation Organization to participate in the debate and that that invitation would confer upon it the same rights of participation as were conferred when a member State was invited to participate under rule 37 of the provisional rules of procedure.

Adopted by 9 votes to 3 (Costa Rica, United Kingdom of Great Britain and Northern Ireland, United States of America) with 3 abstentions (France, Italy, Japan).

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(72) Security Council, Provisional Verbatim Record of the 2785th meeting, 27 January 1988[1] — S/PV.2785 (mimeographed)

Statements by the United Nations Secretariat as to the legal status of the Office of Permanent Observer of the PLO

(73) Legal basis for the observer status of the Palestine Liberation Organization — applicability of certain provisions of the Headquarters Agreement between the United Nations and the Host Country — lack of entitlement of PLO observer to diplomatic privileges and immunities — applicability of local zoning laws and regulations to property acquired by PLO in the Headquarters district[1] — *United Nations Juridical Yearbook 1979*, pp. 169, 170

Letter to a private lawyer

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[1] Document not reproduced. *[Note by the Registry.]*

(74) Opinion of the Legal Counsel of the United Nations on the Status of the PLO Office to the United Nations

Letter from the Legal Counsel, United Nations, to Mr. T. J. Kane, Counsellor at Law, New York

23 September 1982.

I refer to your inquiry on the status of the Palestine Liberation Organization (hereafter referred to as the PLO) in the United Nations.

As you are doubtless aware, membership in the United Nations is governed by Articles 3 and 4 of the United Nations Charter. Pursuant to these provisions the Members of the Organization are those States which signed and ratified the United Nations Charter and those States which were subsequently admitted to membership in the Organization by the General Assembly on the recommendation of the Security Council.

The Charter makes no provision for full participation except in respect of sovereign States. However, degrees of participation in the Organization short of membership have been evolved over the years for certain recognized entities which for one reason or another were not in a position to seek or attain full membership at a particular time. This has been the case, for instance, for representatives of dependent and trust or mandated territories evolving towards independence, which have been described as "proto States"[1].

The status of the PLO has generally evolved within the framework described in the preceding paragraph to the point where it has been granted a unique position in the United Nations. Without attempting in any way to summarize the long history of the Palestine Question as such in the United Nations, the paragraphs which follow list the principal developments in the evolution of that unique status.

I. General Assembly

The General Assembly of the United Nations in 1969[2] recognized and reaffirmed "the inalienable rights of the people of Palestine" and a 1970 resolution[3] declared that the Assembly: "*Recognizes* that the people of Palestine are entitled to equal rights and self-determination, in accordance with the Charter of the United Nations."

In 1973, the PLO requested and was granted a hearing as a petitioner in the Special Political Committee when the Committee took up agenda item 43 (United Nations Relief and Works Agency for Palestine Refugees in the Near East)[4]. The PLO was subsequently invited to and participated in a number of major United Nations conferences such as the World Population Conference and the Third United Nations Conference on the Law of the Sea as a national liberation movement recognized by the League of Arab States. For instance, the resolution adopted by the Economic and Social Council on the basis of which the invitation to the World Population Conference was issued, requested the Secretary-General "to invite representatives of liberation movements now recognized by the Organization of African Unity and/or by the League of Arab States, to participate in the Conference without the right of vote"[5].

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[1] See E. Suy, "Status of Observers in International Organizations", *Recueil des cours*, 1978-II, pp. 79-160.

[2] General Assembly resolution 2535 (XXIV) of 10 December 1969 (full text annexed).

[3] General Assembly resolution 2672 (XXV) of 8 December 1970 (full text annexed).

[4] General Assembly, twenty-eighth session, Special Political Committee, 882nd meeting, 12 November 1973.

[5] Economic and Social Council resolution 1835 (LVI) of 14 May 1974 (full text annexed).

In October 1974, the Summit Meeting of Arab Heads of State recognized the PLO as the sole legitimate representative of the Palestinian people. Immediately thereafter, on 14 October 1974, the General Assembly, by resolution 3210 (XXIX) (copy attached) similarly recognized the PLO as the representative of the Palestinian people and invited it to participate in the deliberations of the General Assembly on the question of Palestine in plenary meetings. Subsequently, by resolution 3237 (XXIX) of 22 November 1974 (copy attached), the General Assembly granted observer status to the PLO. In that resolution the General Assembly, *inter alia*:

> "1. Invites the Palestine Liberation Organization to participate in the sessions and the work of the General Assembly in the capacity of observer;
>
> 2. Invites the Palestine Liberation Organization to participate in the sessions and the work of all international conferences convened under the auspices of the General Assembly in the capacity of observer;
>
> 3. Considers that the Palestine Liberation Organization is entitled to participate as an observer in the sessions and the work of all international conferences convened under the auspices of the organs of the United Nations."

Generally, observers in the General Assembly have the right to attend meetings and to make oral statements on matters within their competence. However, over the years, the PLO has been accorded more extensive rights of participation than other entities participating in an observer capacity. Thus, for instance, the PLO enjoys the right to participate in the plenary meetings of the General Assembly, where its observer can make statements on any matter which is considered to have a bearing upon the situation in the Middle East and speak in exercise of the right of reply. In main committees of the Assembly, the observer may speak on any matter of concern to the PLO. Further, by virtue of the *sui generis* terms of resolution 3237 (XXIX), the PLO has a standing invitation to participate in all United Nations conferences and meetings whereas most organizations and entities require a specific invitation by the competent intergovernmental organ for each conference or meeting which they are to attend in an observer capacity. The PLO has also established a Permanent Observer Office at United Nations Headquarters in New York and one in Geneva.

II. Security Council

The Security Council of the United Nations, at its 2041st meeting, on 27 October 1977 (decision attached) decided by a vote that an invitation should be accorded to the PLO to participate in the debate on the situation in the Middle East and that that invitation would confer upon it the same rights of participation as those conferred on a member State when it was invited to participate under Rule 37 of the provisional rules of procedure. This invitation has been repeated on numerous occasions since that time.

Rule 37 of the Provisional Rules of Procedure of the Security Council reads as follows:

> "Any member of the United Nations which is not a member of the Security Council may be invited, as the result of a decision of the Security Council, to participate, without a vote, in the discussion of any question brought before the Security Council when the Security Council considers that the interests of that Member are specially affected, or when a Member brings a matter to the attention of the Security Council in accordance with Article 35 (1) of the Charter."

In all other cases, invitations to representatives of entities other than States have been issued under Rule 39, which reads:

> "The Security Council may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in remaining matters within its competence."

III. Economic and Social Council

Pursuant to a 1975 Economic and Social Council decision [1], the PLO participates in an observer capacity in the deliberations of the Council where it has rights of participation similar to those it enjoys in the General Assembly and its subsidiary organs.

In the Economic Commission for Western Asia, a regional intergovernmental organ of the Council, it is a full member on an equal footing with member States. Paragraph 2 of the terms of reference of the Commission reads as amended [2] as follows:

> "2. The members of the Commission shall consist of the States Members of the United Nations situated in Western Asia which used to call on the services of the United Nations Economic and Social Office in Beirut and of the Palestine Liberation Organization. Future applications for membership by member States shall be decided on by the Council upon the recommendation of the Commission."

As a full member, the PLO votes and makes proposals, rights not exercised by entities other than States anywhere within the United Nations.

IV. United Nations Agencies and Intergovernmental Organizations

Most United Nations Specialized Agencies, such as the United Nations Educational, Scientific and Cultural Organization, the World Health Organization and the Food and Agriculture Organization, have granted the PLO observer status. Other international bodies, such as the non-aligned Conference, the Group of 77, the Islamic Conference and the League of Arab States, have admitted the PLO as a full member.

* * *

While initially, the PLO was invited to United Nations meetings as a petitioner, it then participated as a liberation movement until it won United Nations recognition as the sole legitimate representative of the Palestinian people. As indicated above, a review of the procedural practice of the United Nations shows that the PLO now has a unique status in the United Nations with extensive and continuing rights of participation.

Even outside the United Nations framework, the overwhelming majority of States formally recognize the PLO as the representative of the Palestinian people and have established direct links with it on a bilateral basis, sometimes even granting it full diplomatic status.

I hope that the above information will be of assistance to you. Should you have

[1] Economic and Social Council decision 129 LIX of 3 July 1975.

[2] The original terms of reference of the Commission are contained in Economic and Social Council resolution 1818 (LV) of 9 August 1973. Subsequently, they were amended by Council resolution 2089 (LXIII) of 22 July 1977.

further questions, please, do not hesitate to contact me. You are authorized to make this letter available in any court or other proceeding in which the status of the PLO in the United Nations is relevant.

(Signed) Erik SUY,
The Legal Counsel.

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(75) Opinion of the Legal Counsel of the United Nations on the Status, Privileges and Immunities Under International Law of the Representatives of the PLO to the United Nations

Letter from the Legal Counsel, United Nations, to Mr. R. Clark, New York

11 June 1986.

I wish to refer to your recent discussion with representatives of this Office in which you requested clarifications regarding the status, privileges and immunities under international law of the representatives of the Palestine Liberation Organization to the United Nations in New York.

As you know, the Palestine Liberation Organization representation in New York derives from an invitation of the General Assembly which in resolution 3237 (XXIX) of 22 November 1974:

1. [Invited] the Palestine Liberation Organization to participate in the sessions and the work of the General Assembly in the capacity of observer;
2. [Invited] the Palestine Liberation Organization to participate in the sessions and the work of all international conferences convened under the auspices of the General Assembly in the capacity of observer;
3. [Considered] that the Palestine Liberation Organization is entitled to participate as an observer in the sessions and the work of all international conferences convened under the auspices of other organs of the United Nations;
4. [Requested] the Secretary-General to take the necessary steps for the implementation of the present resolution.

The resolution did not address the question of the status, privileges and immunities of the Palestine Liberation Organization nor did it refer to the establishment by the Palestine Liberation Organization of a permanent office in New York. The decision to establish an office of the Permanent Observer of the Palestine Liberation Organization was, however, communicated to the Secretary-General by the Palestine Liberation Organization shortly after the adoption of the resolution in February 1975 and was taken note of in a letter of acknowledgement signed on behalf of the Secretary-General by the then Under-Secretary-General for General Assembly Affairs, Mr. Bradford Morse, dated 3 March 1975.

The maintenance of a permanent office in New York by the Palestine Liberation Organization may be considered a necessary requirement in order to adequately fulfil the observer functions conferred by the United Nations General Assembly. Many other organizations have received standing invitations to participate in the sessions and work of the General Assembly as observers, and maintain permanent offices at Headquarters, including the Asian-African Legal Consultative Committee, the Council for Mutual Economic Assistance, the European Economic Community, the League of Arab States, the Organization of

African Unity and the South West Africa People's Organization. While the particular status, privileges and immunities of each of these organizations may vary according to its legal nature, the United Nations considers it a normal function of the observer status that such organizations maintain permanent offices and that they should have unimpeded access to the headquarters district.

The main international legal instruments governing the status, privileges and immunities of representatives to the United Nations were elaborated in the period 1945-7 immediately after the founding of the United Nations. These include the Headquarters Agreement between the United Nations and the United States of 4 August 1947 (Public Law 80-357, Vol. II, *UNTS*, p. 11) and the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 (Vol. I, *UNTS*, p. 15). Neither of these instruments specifically contemplated the institution of observer status for States or for organizations which has developed essentially on the basis of practice, first in respect of non-member States such as Switzerland and subsequently in respect of inter-governmental organizations and other organizations. The Headquarters Agreement of 1947 did, however, provide in Section 11 for the unimpeded transit to or from the headquarters district of "other persons invited to the headquarters district by the United Nations ... on official business".

In the absence of any specific international legal regulation of the privileges and immunities of non-State entities invited to participate as observers in United Nations meetings, the United Nations in practice has considered the issues arising in that connection principally in the light of the provisions of the United Nations Charter and the Headquarters Agreement.

However, in 1975 the United Nations Conference on the Representation of States in their Relations with International Organizations adopted a resolution relating to the Observer Status of National Liberation Movements recognized by the Organization of African Unity and/or by the League of Arab States requesting that the question be examined by the General Assembly without delay and recommended that, in the meantime,

> "the States concerned . . . accord to delegations of national liberation movements which are recognized by the Organization of African Unity and/or by the League of Arab States in their respective regions and which have been granted observer status by the international organization concerned, the facilities, privileges and immunities necessary for the performance of their tasks and to be guided therein by the pertinent provisions of the Convention adopted by the Conference".

No substantive action has yet been taken by the General Assembly on this request. Nevertheless, it is widely accepted that certain functional privileges and immunities flow by necessary intendment from the Headquarters Agreement and General Assembly resolution 3237 without which the invited entity would not be in a position to carry out its functions. Such functional privileges and immunities certainly extend to immunity from legal process in respect of words spoken or written or any act performed in the exercise of the observer function.

Furthermore, since the permanent presence of the Palestine Liberation Organization in New York is a direct result of General Assembly resolution 3237 and is restricted to United Nations matters, that presence could appropriately be considered as not covering the receipt of service of legal process both personally and *in rem* in regard to matters completely unrelated to that presence.

It has also to be noted that the United States has never conferred recognition on the Palestine Liberation Organization Observer Mission and has certainly neither explicitly nor tacitly agreed to the performance on American soil of such official

acts as the acceptance of process with effect for or against the Palestine Liberation Organization.

(Signed) Carl-August FLEISCHHAUER,
The Legal Counsel.

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(76) Relevant Cases in United States Courts

Anti-Defamation League v. *Kissinger*, et al. (*Digest of United States Practice in International Law*, 1974, by Arthur W. Rovine, pp. 27-29)

Headquarters Agreement

In *Anti-Defamation League* v. *Kissinger*, et al., Civil Action No. 74C1545 before the U.S. District Court for the Eastern District of New York, the League obtained on October 31, 1974, an Order directing the Departments of State, Justice and the Treasury to show cause why the Palestine Liberation Organization (PLO) representatives, invited to participate in the 29th Session of the U.N. General Assembly, should not be denied entry into the United States, or in the alternative, granted only a restricted C-2 visa limiting their freedom of movement to the purposes of their visit to the United Nations. Before the case was heard, the Department of State decided to issue only the limited C-2 visas.

After oral argument on November 1, 1974, U.S. District Judge Mark A. Costantino denied the petitioner's motion without prejudice, subject to the condition that the members of the PLO invited to the General Assembly be issued the limited C-2 visas. The Court said, in pertinent part:

> "... This court has jurisdiction to review an alleged abuse of administrative discretion in the issuance of visas to certain members of the Palestine Liberation Organization.
>
> This problem must be viewed in the context of the special responsibility which the United States has to provide access to the U.N. under the Headquarters Agreement. It is important to note for the purposes of this case that a primary goal of the U.N. is to provide a forum where peaceful discussion may displace violence as a means of resolving disputed issues. At times our responsibility to the U.N. may require us to issue visas to persons who are objectionable to certain segments of our society.
>
> Although the fears expressed by counsel for the Anti-Defamation League may have some basis, this court trusts that the law enforcement authorities will provide adequate security for the individual petitioners as they have apparently done in the past. It is worth noting that the denial of visas to these PLO representatives would not necessarily enhance petitioners' security.
>
> The government's concern for security is evidenced by its recent decision to issue restrictive C-2 visas to the PLO representatives. For the reasons this court has outlined, the relief requested is denied without prejudice, subject to the condition that the C-2 visas be issued.
>
> The court would like, however, to express its view that serious consideration should be given to the imposition of more restrictive territorial limitations on the movement of the PLO representatives."

In a letter dated November 7, 1974, to the Departments of State and Justice, counsel for the Anti-Defamation League requested, in light of Judge Costantino's suggestion for "more restrictive territorial limitations", that the two Departments

explicitly delineate the right of movement of the PLO representatives who received the C-2 visas. (The C-2 visas issued limited the PLO delegation to a 25-mile radius from Columbus Circle in Manhattan.) The League requested an explicit limitation to bar the PLO representatives

> "from activity of any kind outside the physical limits of the United Nations headquarters; that it forbid any participation in demonstrations, forums, public meetings, radio and television appearances or the like off the United Nations premises. We do not ask that these restrictions apply to the activities of the PLO leaders undertaken within the territorial confines of the United Nations headquarters."

The League asked that the PLO leaders "be permitted to move about in the U.S. only as necessary to fulfill the requirements of the U.N. invitation ...".

On November 18, 1974, Robert O. Blake, Deputy Assistant Secretary of State for International Organization Affairs, replied to the League as follows:

> "I have been asked by the Secretary of State to reply to your letter of November 7, 1974. Having considered Judge Costantino's decision and the arguments contained in your letter, as well as all aspects of the presence here of the PLO delegation for the Palestine debate and giving due regard to our responsibilities under the Headquarters Agreement, the Department has concluded that further restrictions on the activities of the PLO delegation above the strict ones already applied would not be appropriate.
>
> You may be sure that we are fully conscious of and sympathetic with your preoccupations. Furthermore, you will recognize that the U.S. delegation strongly opposed the hearing of the PLO representatives in the manner in which they were invited. We appreciate receiving your letter, and you may be sure that we continue to give the closest attention to the concerns that motivated it."

(Dept. of State File L/SCA. The 1947 Headquarters Agreement between the United States and the United Nations is at *TIAS* 1676; 61 Stat. 3416. It was signed at Lake Success June 26, 1947, and entered into force Nov. 21, 1947.)

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(77) *Harvard Law School Forum*, et al., *Plaintiffs* v. *George P. Shultz, Secretary of State, Defendant* (Civ. A. No. 86-0977-S. United States District Court, D. Massachusetts. April 18, 1986) *(Federal Supplement Volume 633)*

Law school forum, professor, and student brought action seeking to enjoin Secretary of State from refusing to permit Palestine Liberation Organization member to travel to participate in political debate. The District Court, Skinner, J., held that (1) action did not raise nonjusticiable political question, and (2) plaintiffs were entitled to preliminary injunction.

Motion granted.

1. Constitutional Law ⇐68(1)

Action seeking to enjoin Secretary of State from refusing to permit member of Palestine Liberation Organization United Nations Observer Mission from traveling to participate in political debate did not raise nonjusticiable political question, although proffered reason for denying request involved executive's policy of not affording recognition to the PLO. U.S.C.A. Const. Amend. 1; Immigration and Nationality Act, § 212*(d)*, 8 U.S.C.A. § 1182*(d)*.

2. Injunction ⇐75

Law school forum was entitled to preliminary injunction prohibiting Secretary of State from refusing to permit member of Palestine Liberation Organization United Nations Observer Mission from traveling to participate in political debate with law school professor, where Secretary's proffered reason for denying member's travel request was related to suppression of protected political discussion, and thus was not facially legitimate. U.S.C.A. Const. Amend. 1; Immigration and Nationality Act, § 212*(d)*, 8 U.S.C.A. § 1182*(d)*.

3. Aliens ⇐54.3(2)

Applicable standard for reviewing Secretary of State's decision to refuse to permit member of Palestine Liberation Organization United Nations Observer Mission to travel to participate in political debate was whether Secretary had facially legitimate and bona fide reason for his decision. U.S.C.A. Const. Amend. 1; Immigration and Nationality Act, § 212*(d)*, 8 U.S.C.A. § 1182*(d)*.

Scott P. Lewis, Maria P. Nichols, Palmer & Dodge, John Reinstein, Civil Liberties Union of Mass. Foundation, Boston, Mass., for plaintiffs.

Asst. U.S. Atty. Martha Sosman, Boston, Mass., for defendant.

MEMORANDUM AND ORDER ON PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND DEFENDANT'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

Skinner, District Judge.

Plaintiffs in this action, the Harvard Law School Forum, Professor Alan Dershowitz, and a Harvard Law School student, Brad Roth, bring suit to enjoin the Secretary of State (the "Secretary") from refusing to permit Palestine Liberation Organization ("PLO") member Zuhdi Labib Terzi to travel to Cambridge, Massachusetts to participate in a debate with Professor Dershowitz on Middle Eastern politics. Plaintiffs claim that the Secretary's refusal violates their First Amendment rights to hear a debate on a critical political question.

Facts

The facts in this case are not in dispute. In August, 1985, the plaintiff Harvard Law School Forum invited Zuhdi Labib Terzi to participate in a debate on "Prospects for Peace in the Middle East" with Professor Dershowitz. Terzi is the Permanent Observer of the PLO at the United Nations ("UN") and the highest ranking member of the PLO in the United States. Professor Dershowitz is said to be an outspoken member of the Harvard Law School faculty and a well-known pro-Israeli activist. Plaintiff Roth arranged the debate and the Forum agreed to sponsor it, scheduling it for October 31, 1985.

The parties agree that Terzi, as a member of the PLO, is an excludable alien under federal immigration law. 8 U.S.C. § 1182*(a)*(28)(F). The excludability of a member of the PLO is not dependent on any demonstration by the State Department that admission of the individual to this country would pose a security threat. 22 U.S.C. § 2691*(c)*. However, the Attorney General may, "in his discretion", grant a waiver allowing an excludable alien into the country temporarily. 8 U.S.C. § 1182*(d)*(3). Such waivers are subject to conditions as prescribed by the Attorney General. 8 U.S.C. § 1182*(d)*(6).

The United States, as host country of the UN, has entered into the "UN Headquarters Agreement". In Section 11 of the Headquarters Agreement, the United States agreed not to impede the transit to and from the UN Headquarters of members of Observer Missions to the UN. As a result, the Attorney General, on advice from the Secretary of State, has granted a waiver of excludability to allow PLO Observer Mission personnel access to the UN headquarters, even though such individuals are excludable under immigration law.

With respect to individuals covered by the Headquarters Agreement who are from certain States or organizations, the United States has a general policy of permitting non-UN related travel only within a twenty-five mile radius of the center of New York City. Since the PLO Observer Mission in New York was established in 1974, its personnel have been subject to this geographic limitation. Within the 25-mile limit, the United States has not sought to impose any restrictions on the non-UN related political activity of PLO Observer Mission personnel, but members of the PLO mission may travel beyond the geographic limitation for non-UN related activity only if they receive prior State Department approval of their proposed itinerary and purpose of travel.

In September, 1985, Terzi submitted to the United States Mission to the UN a standard form requesting authorization to travel to Massachusetts to participate in the debate at the Harvard Law School. The United States Mission notified Terzi that the State Department had denied his request. No reason for the denial was given.

Previous to this denial, Terzi had been allowed to travel outside the geographic limitation on several occasions for personal reasons or social gatherings. He was allowed on one occasion to travel to Massachusetts for a summer vacation. Each time Terzi requested a travel permit for the purpose of speaking in public about the politics of the Middle East or to participate in public political discussions, however, it was denied. Terzi has not been allowed to accept such invitations to Georgetown University, Rutgers University and the University of Virginia.

In opposition to the plaintiffs' motion, the defendant has submitted the declaration of Alan L. Keyes, Assistant Secretary of State for International Organization Affairs. In his declaration, the Assistant Secretary sets forth the United States' policy toward the PLO generally and toward Terzi's travel requests. The Assistant Secretary states that the United States has consistently refused to recognize or negotiate with the PLO as long as the PLO does not recognize Israel's right to exist and does not accept certain UN Security Council resolutions.

> Our policy is designed to withhold legitimization of the PLO until it has satisfied these conditions. Consistent with this policy, our diplomatic strategy has been aimed at discouraging other States from recognizing or otherwise according legitimacy to the PLO unless these conditions are met. If we were to allow PLO members to travel freely throughout the United States furthering their political agenda and attempting to build their political base, we would undercut our policy of not lending legitimacy to that organization. (Keyes Declaration, para. 5.)

With respect to Terzi specifically, the Assistant Secretary states that his travel requests

> have generally been granted when his travel was for personal business, family visitation, or other humanitarian reasons ... [and] have not been granted ... when the purpose of his travel was to engage in political activity on behalf of the PLO ... The particular request at issue in this case, namely, Terzi's

request to participate on October 31, 1985 in the Harvard Law School Forum in Cambridge, Massachusetts, was denied based on the judgment of responsible officials in the Department of State that Terzi's appearance at that function would have constituted political activity on behalf of the PLO. (Keyes Declaration, para. 12.)

In a supplemental declaration, Assistant Secretary Keyes clarified that when assessing whether a member of the PLO Observer Mission is requesting a travel waiver to participate in "political activity", the United States considers that the category includes but is not limited to public speaking:

> Consistent with our policy of avoiding the appearance of legitimizing the PLO until certain conditions are met, we subsume within "political activity" any activity that would lend support, honor, recognition, or attention to the PLO member in his PLO capacity, even where public speaking is not involved. For example, we would not grant a travel waiver for a PLO official's request to appear at a fund-raising dinner, to receive an award, to accept an honorary degree, to participate in a rally or parade, or otherwise to conduct PLO business not related to the UN. (Keyes Amended Declaration, para. 10.)

The Harvard Law School Forum has now made arrangements for the Terzi-Dershowitz debate to be held at Harvard Law School on April 28, 1986, if Terzi is permitted to travel to Cambridge. Plaintiffs bring their motion for a preliminary injunction to enjoin the Secretary from prohibiting Terzi from participating in the debate.

Justiciability

[1] The first issue presented by the Secretary's motion is whether plaintiff's complaint raises a nonjusticiable political question. The Secretary's argument that this case is not judicially reviewable is twofold. First, he argues that the executive's decisions with respect to the privileges and treatment to be afforded to foreign officials are not reviewable because they raise purely political questions. Second, he argues that the specific decision at issue in this case, the denial of Terzi's travel request, is a discretionary political matter, not subject to review under the Supreme Court's landmark decision in *Kleindienst* v. *Mandel*, 408 U.S. 753, 92 S.Ct. 2576, 33 L.Ed.2d 683 (1972).

The Secretary contends that because Terzi is "the highest ranking official of the PLO in this country" the executive's decisions as to how to treat him are wholly political in character and not subject to judicial review. In the Supreme Court's leading case on the political question doctrine, the Court identified the following factors as essential to the finding of a political question:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. (*Baker* v. *Carr*, 369 U.S. 186, 217, 82 S.Ct. 691, 710, 7 L.Ed.2d 663 (1962).)

The Court then went on to say that unless one (or more) of the above "formulations" was inextricable from the issue in the case, the court should accept jurisdiction. *Id.* The Court was careful to distinguish "political cases" from "political questions", noting that courts cannot reject "a bona fide controversy as to whether some action denominated 'political' exceeds constitutional authority". *Id. See also* Tribe, *American Constitutional Law* 75-76 (1978).

The Secretary argues that the issue in this case is a political question because the President, not the judiciary, is charged with the authority to make decisions regarding the recognition of foreign governments and the nature of diplomatic relations to be conducted with those governments. The Secretary points to Art. II, § 2, cl. 2 and § 3 of the Constitution (the power to appoint and receive ambassadors) as the "textually demonstrable constitutional commitment" of the issue to the executive.

It is well settled that the decision whether or not to recognize a foreign government or entity is a political question to be decided by the executive. *Chicago & Southern Airlines* v. *Waterman Steamship Corp.*, 333 U.S. 103, 68 S.Ct. 431, 92 L.Ed. 568 (1948); *Guaranty Trust Co.* v. *United States*, 304 U.S. 126, 58 S.Ct. 785, 82 L.Ed. 1224 (1938). Similarly, the decision to establish diplomatic relations with a foreign government or entity is a political question. *Americans United for Separation of Church and State* v. *Reagan*, 786 F.2d 194, 201-02 (3d Cir.1986). However, this case does not involve a challenge to the recognition, nonrecognition or establishment of relations with a foreign government or entity. The issue in this case is whether the Secretary of State can constitutionally deny the travel request of a UN Observer on the basis of the Observer's intention to participate in a political debate with American citizens. Although the Secretary's proffered reason for denying the request involves the executive's policy of not affording recognition to the PLO, the case is not a challenge to that policy. A determination of the constitutionality of the Secretary's conditioning of a waiver of excludability under 8 U.S.C. § 1182*(d)* does not impinge upon the executive's conduct of foreign relations simply because the individual at issue is a member of a nonrecognized foreign entity.

Moreover, despite the Secretary's argument to the contrary, *Kleindienst* v. *Mandel*, 408 U.S. 753, 92 S.Ct. 2576, 33 L.Ed.2d 683 (1972) and its progeny strongly indicate that this case is judicially reviewable. In *Mandel*, the Court determined that where Congress had provided a waiver procedure in the statutory scheme governing excludability of aliens, the courts could determine whether the executive's decision not to grant such a waiver was supported by a "facially legitimate and bona fide" reason. *Id.* at 767-770, 92 S.Ct. at 2584-85. Although the Court did not explicitly address the political question doctrine, the case suggests that the federal courts have some role in enforcing constitutional restraints on the executive's implementation of the statutory scheme enacted by Congress. *Id.*

The lower courts have also rejected arguments that they are without the power to hear First Amendment challenges to the executive's decision to exclude aliens. *See Abourezk* v. *Reagan*, 785 F.2d 1043 (D.C.Cir.1986); *Allende* v. *Shultz*, 605 F.Supp. 1220 (D.Mass.1985). In *Allende*, the court considered whether the issue of excludability of aliens was constitutionally and historically bestowed on the political branches such that judicial review was impermissible. The court concluded that it did have jurisdiction over plaintiffs' First Amendment challenges to the exclusion of the widow of former Chilean President Salvador Allende.

> Although the United States Supreme Court has consistently recognized that the sensitive and fluctuating nature of international relations dictates "a narrow standard of review of decisions made by Congress or the President in

> the area of immigration or naturalization", ... the Court has nevertheless emphasized that the government's power in this area is not entirely immune from judicial scrutiny ... The exercise of judicial review, though necessarily limited in scope, is particularly appropriate in cases like the one at bar which involve fundamental rights of United States citizens. (*Allende, supra*, at 1223 (citations omitted).)

In *Abourezk*, the court of appeals also concluded that the judiciary has a role in reviewing the executive's decisions in this area:

> The Executive has broad discretion over the admission and exclusion of aliens, but that discretion is not boundless. It extends only as far as the statutory authority conferred by Congress and may not transgress constitutional limitations. It is the duty of the courts, in cases properly before them, to say where those statutory and constitutional boundaries lie. (*Abourezk, supra*, at 1061-62[1].)

This case, which involves plaintiffs' First Amendment rights to participate in a debate with an individual who is prohibited by the Secretary from traveling outside a confined geographic area for the purpose of engaging in political activity is indistinguishable from the exclusion cases cited above. In each of these cases, the court concluded that it did have a limited role in determining whether the denial of a waiver of excludability was constitutional. I conclude that the court in this case has a similar role in determining whether the conditions imposed on the waivers granted by the executive are constitutional. Accordingly, the case will not be dismissed on the basis that it presents a nonjusticiable political question.

Motion for Preliminary Injunction

[2] Turning to the merits, plaintiffs would be entitled to a preliminary injunction if they could show that (1) they will suffer irreparable harm if the injunction is not granted; (2) such harm outweighs any harm that granting injunctive relief would cause the defendant; (3) plaintiffs will most likely succeed on the merits; and (4) the public interest will not be adversely affected by the granting of the injunction. *Agency Rent-A-Car, Inc.* v. *Connolly*, 686 F.2d 1029, 1034 (1st Cir.1982).

The Secretary contends that the plaintiffs cannot show either irreparable harm or a likelihood of success on the merits. The Secretary's argument as to irreparable injury can be quickly dismissed. A loss of First Amendment freedoms constitutes irreparable injury. *Maceira* v. *Pagan*, 649 F.2d 8, 18 (1st Cir.1981) (citing *Elrod* v. *Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2689-90, 49 L.Ed.2d 547 (1976)).

The question as to whether plaintiffs have demonstrated a likelihood of success on the merits is more complicated. Framed in statutory terms, the question is whether 8 U.S.C. § 1182(*d*)(6), providing that the Attorney General shall prescribe conditions for excludable aliens whose exclusion is waived under 8 U.S.C. § 1182(*d*)(3), is unconstitutional as applied here in that it deprives plaintiffs of freedom of speech guaranteed by the First Amendment[2].

[3] Before answering this question, however, it is necessary to determine the applicable legal standard. The Secretary suggests that if any judicial review is

[1] The Secretary attempts to distinguish *Allende* and *Abourezk* as cases involving private individuals and not a foreign official or representative. This distinction is factually inaccurate with respect to *Abourezk*, which concerned the exclusion of Tomas Borge, the Interior Minister of Nicaragua, among others. *Abourezk, supra*, at 1048. Moreover, the distinction is untenable because individuals who have official governmental or organizational duties may also speak as private individuals and not in a representative capacity.

[2] The plaintiffs do not claim that Terzi's constitutional rights have been violated.

permissible, then only the limited review set forth in *Mandel* is appropriate. I agree.

The *Mandel* standard is appropriately employed here to test the constitutionality of the Secretary's actions because the conditions imposed on Terzi are the equivalent of denying him entry into the country to accept an invitation to participate in a debate in Cambridge. Since American citizens could challenge the Attorney General's decision not to waive his exclusion under the *Mandel* standard if Terzi had been entirely excluded, that standard is the appropriate one by which to measure conditions which produce the same result for plaintiffs in this case[1].

In *Mandel*, the Court held that where the executive refuses to waive an alien's excludability "on the basis of a facially legitimate and bona fide reason, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant". *Mandel, supra*, 408 U.S. at 770, 92 S.Ct. at 2585. The government's proffered reason for denying a waiver to Mandel was that he had previously abused such waivers by going beyond his stated itinerary. *Id.* at 769, 92 S.Ct. at 2585. The Court found that this reason was facially legitimate and bona fide. *Id.*

In *Allende*, Chief Judge Caffrey explained how *Mandel* has been interpreted:

> The lower federal courts have interpreted *Mandel* to require the Government to provide a justification for an alien's exclusion when that exclusion is challenged by United States citizens asserting constitutional claims. *E.g., Burrafato* v. *United States*, 523 F.2d 554, 556 (2nd Cir.1975), *cert. denied* 424 U.S. 910, 96 S.Ct. 1105, 47 L.Ed.2d 313 (1976); *Abourezk* v. *Reagan*, 592 F.Supp. 880, 881 (D.D.C.1984). The line of precedents from the lower courts further reveals that the explanation given must be "facially legitimate and bona fide" not only in the general sense, but also within the context of the specific statutory provision on which the exclusion is based. *See Abourezk*, 592 F.Supp. 880; *El-Werfalli* v. *Smith*, 547 F.Supp. 152 (S.D.N.Y. 1982); *NGO Committee on Disarmament* v. *Haig*, No. 82 Civ. 3636, slip op. (S.D.N.Y. June 10, 1982) *aff'd*, 697 F.2d 294 (2d Cir.1982).

Allende, supra, at 1224. I concur in the Chief Judge's reading of the cases following *Mandel*. The Secretary is obliged to justify the denial of Terzi's travel request with a facially legitimate and bona fide reason in the face of plaintiff's assertion of their First Amendment rights to participate in a debate with Terzi.

The justification the Secretary offers for the denial of Terzi's travel request is that if the Secretary were to allow Terzi to participate in political activity outside of the limited area in which he is presently allowed to travel and publicly speak, he would be undermining the United States' policy of not lending legitimacy to the PLO. Thus, the Secretary concedes that his reason is based on Terzi's proposed participation in a political debate with American citizens.

Although the Secretary's reason appears to be bona fide, it is not facially legitimate. The Secretary's justification is directly related to the suppression of a political debate with American citizens. If plaintiffs in this case desired to interact with Terzi in a social setting, the Secretary would allow such interaction. Because they desire to hear his views on the politics of the Middle East in a political forum,

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[1] Whether plaintiffs have access to Terzi's ideas through alternative means, such as books, speeches, tapes or telephone hookups is irrelevant to the First Amendment inquiry in this case. As the Court noted in *Mandel*, "[t]his argument overlooks what may be particular qualities inherent in sustained, face-to-face debate, discussion and questioning". *Mandel, supra*, 408 U.S. at 765, 92 S.Ct. at 2583. *See also, Abourezk* v. *Reagan*, 592 F.Supp. 880, 883 (D.D.C.1984).

they are denied access to him. The Secretary's decision on the travel request at issue is therefore based on the content of the discussions and interaction Terzi would have with those outside the geographic limitation. The Secretary's actions are completely at odds with the First Amendment's protection of political debate and our "national commitment to the principle that debate on public issues should be uninhibited, robust and wide open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials". *New York Times* v. *Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964).

The speech at issue in this case is at the heart of what was intended to be protected by the First Amendment:

> Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. (*Mills* v. *Alabama*, 384 U.S. 214, 218, 86 S.Ct. 1434, 1437, 16 L.Ed.2d 484 (1966).)

This speech is no less protected because the listeners' and debater's First Amendment rights are asserted. *Mandel*, *supra*, 408 U.S. at 762-65, 92 S.Ct. at 2581-83. The Secretary's proffered reason for denying Terzi's travel request is not facially legitimate because it is related to the suppression of protected political discussion. Accordingly, even under the limited review contemplated by *Mandel*, I conclude that it is likely that the Secretary's actions will be adjudged unconstitutional.

Finally, I must consider the balancing of the public interest. It may well be that the public interest will, in some respect, be adversely affected by affording a forum to a PLO representative whose policies are in conflict with those of the United States and indeed are anathema to many citizens. The public interest in preserving free and open debate on precisely such subjects, however, must be regarded as of overwhelming priority, as mandated by the First Amendment, and as being at the heart of our survival as a free people.

Plaintiffs' motion for a preliminary injunction is *Allowed*. The Secretary's motion to dismiss or in the alternative for summary judgment is *Denied*.

Part III. Materials Relevant to the United Nations Headquarters Agreement

1. Legislative History of the Headquarters Agreement

(78) Report of the Preparatory Commission of the United Nations, 1945

C: DRAFT TREATY TO BE CONCLUDED BY THE UNITED NATIONS WITH THE UNITED STATES OF AMERICA FOR THE LOCATION OF THE HEADQUARTERS OF THE UNITED NATIONS

This draft convention is transmitted by the Preparatory Commission as a working paper for the General Assembly. See Recommendation 4 of Chapter X.

The General Assembly of the United Nations decided by resolution of ..... January, 1946, to establish the permanent seat of the Organization in the United States of America, and to conclude a treaty with the United States of

America. The Congress of the United States of America, by Joint Resolution of ..... January, 1946, approved by the President, agreed to the establishment of the permanent seat of the United Nations in the United States of America, and to the conclusion of a treaty with the United Nations. The Secretary-General of the United Nations, Mr. ..... and Mr. ..... have been authorized to sign this treaty on behalf of the United Nations and the United States of America respectively.

Article 1

The permanent seat of the United Nations shall be the area marked pink on the annexed map, situated ..... Additions may be made later to this area in accordance with the provisions of Article 22. In this treaty the expression "zone" means this area, together with any additions to it.

Article 2

The United States of America undertakes (on the entry into force of this treaty) to vest in the United Nations the full ownership of all land in the zone and of all buildings situated thereon at the moment of transfer.

Article 3

The United Nations shall have exclusive rights over the subsoil of land conveyed to it and in particular the right to make any constructions underground and to obtain therefrom water supplies. It shall not, however, have the right to exploit minerals.

Article 4

The United States of America shall be responsible for expropriating and compensating so far as necessary all interests in the land and buildings conveyed to the United Nations.

Article 5

Having regard to Article 2 above, the United Nations shall pay to the United States of America a fair price for any land and buildings conveyed, which sum shall be credited to the United States of America in the accounts of the United Nations and be set off against contributions due from the United States of America. In default of agreement, the price shall be determined by an expert selected by the President of the International Court of Justice.

Article 6

The United Nations zone, including the air space above it, shall be inviolable.

Article 7

The zone shall be entirely under the control and authority of the United Nations.

Article 8

Without prejudice to the generality of Article 7, the United States of America has no jurisdiction over any questions relating to entry in the zone and the conditions under which persons may remain or reside there, or any questions relating to the construction or removal of buildings in the zone.

Article 9

Officers or officials of any authority in the territory of the United States of America whether administrative, judicial, military or police, shall not enter the zone to perform any official duties therein except with the permission of and under conditions agreed by the Secretary-General. The service of civil legal process, including the seizure of private property, shall take place within the zone under conditions approved by the Secretary-General.

Article 10

Subject to Article 12, the law of the United States of America shall apply within the zone and in particular the ordinary civil and criminal law.

Article 11

The courts of the United States of America shall (without prejudice to any provisions of the Annex to this treaty and eventually of the General Convention relating to immunities) have jurisdiction over acts done or transactions taking place in the zone in the same manner as they have over similar acts or transactions taking place outside the zone.

Article 12

The United Nations may, however, enact regulations for the zone, excluding the application of particular provisions of the law of the United States of America and making provisions of an administrative character for the zone.

Article 13

The courts of the United States of America when dealing with cases arising out of acts done or transactions taking place in the zone or relating thereto shall take cognizance of the regulations by the United Nations under Article 12 above, though they shall not be obliged to inflict penalties for infraction of regulations made by the United Nations unless the United States of America has agreed to these regulations before the infraction was committed.

Article 14

Persons accredited to the United Nations by Members as permanent (resident) representatives and their staffs, whether residing inside or outside the zone, shall be recognized by the United States of America as entitled on its territory to the same privileges and immunities as the United States of America accords to the diplomatic envoys and their staffs accredited to the Government of the United States of America.

Article 15

The United States of America undertakes to ensure on equitable terms the provision of necessary public services to the zone including electricity, water, gas, post, telephone, telegraph, drainage and collection of refuse. If there is any difficulty in agreeing upon the terms, the question shall be decided by an expert appointed by the President of the International Court of Justice.

Article 16

The United States of America undertakes to guarantee at all times adequate means of communication between the zone and the limits of the territory of the

United States of America both for the passage of persons and the transmission of correspondence and telegrams and the transport of goods required for use and consumption in the zone.

Article 17

Representatives of the Members, irrespective of the relations existing between their Government and the Government of the United States of America, and officials of the Organization, and specialized agencies, and their families, shall at all times enjoy the right of unimpeded and safe transit over the territory of the United States of America to and from the zone for the purpose of taking part in the Organization's work.

Article 18

The accredited representatives of the press, radio and films, and of non-governmental organizations recognized by the United Nations for the purpose of consultation, shall enjoy the rights referred to in Article 17.

Article 19

Immigration regulations and other regulations regarding residence of foreigners in force in the United States of America shall not be applied in such a manner as to interfere with the rights referred to in Articles 16, 17 and 18. Any visas required shall be granted without charge, without delay, and without requirement of personal attendance for the issue of the visa.

Article 20

The United States of America shall give facilities for the issue of visas to, and for the use of the available means of transport by, persons coming from abroad who desire to visit the zone.

Article 21

Nothing in the preceding paragraphs shall prevent the Government of the United States of America from taking precautions in the interests of national security provided that such precautions shall not have the effect of interfering with the rights referred to in Articles 16, 17 and 18.

Article 22

The United Nations may establish its own radio telegraph sending and receiving stations (including broadcasting, teletype and telephoto services). The United Nations shall make arrangements with the International Telecommunications Union with regard to wavelengths and other similar matters.

Article 23

The United States of America undertakes at the request of the Secretary-General, acting in pursuance of a resolution of the General Assembly, to vest in the United Nations full ownership over such further land as may be required for the purpose of constructing an airport, railway station or radio telegraphic station or for such other purposes as may be required by the United Nations. Such land when conveyed to the United Nations shall form part of the United Nations zone.

The provisions of Articles 3, 4 and 5 shall apply to land so conveyed.

Article 24

In the event of the land conveyed in accordance with Article 23 not being contiguous to the remainder of the United Nations zone, the United States of America shall guarantee free communication and transit between the parts of the zone.

Article 25

The United States of America shall provide on the boundaries of the zone such police protection for the zone as is required and shall be responsible for ensuring that the tranquility of the zone is not disturbed by the unauthorized entry of persons from outside, or by disturbance in its immediate vicinity.

Article 26

If so requested by the Secretary-General, the United States of America undertakes to provide a sufficient number of police to perform duties inside the zone for the preservation of law and order therein and for the removal of persons who have committed or are suspected of having committed or being likely to commit offences.

Article 27

The United States of America undertakes to take the necessary steps to insure that the amenities of the zone and the purposes for which it is required are not prejudiced or obstructed by any use of the land in its vicinity.

Article 28

Without prejudice to the provisions in Annex 1 of this treaty and subsequently of the General Convention relating to the immunities of officials of the United Nations and the representatives of Members, the United Nations shall not permit the zone to become a refuge for persons who are avoiding arrest under the law of the United States of America or are required by the Government of the United States of America, for extradition nor for persons who are endeavouring to avoid service of civil legal process.

Article 29

The Secretary-General and the Government of the United States of America shall settle by agreement the channels through which correspondence relating to the application of the different provisions of this treaty and other questions affecting the zone shall be conducted. If the Secretary-General so requests, the Government of the United States of America shall appoint a special representative for the purpose of liaison with the Secretary-General.

Article 30

Any differences between the Secretary-General and the United States of America concerning the interpretation or application of this treaty or of any supplementary agreement or arrangements which are not settled by negotiation may be referred for arbitration to an umpire appointed for the purpose by the President of the International Court of Justice.

Article 31

Either party may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question of general importance arising in the course of the proceedings referred to in Article 30. Pending the receipt of the opinion of the International Court of Justice, an interim decision of an umpire shall be observed by both parties.

Article 32

Until half the Members of the United Nations have ratified the General Convention mentioned in Article 32, the provisions set out in Annex 1 to this treaty shall apply between the United Nations and the United States of America. Thereafter, these provisions shall be replaced by the provisions of the General Convention, and the provisions of the General Convention shall be complementary to the provisions of this treaty.

Article 33

If any provision of this treaty and any provision of the General Convention mentioned in Article 32 relate to the same subject-matter, the two provisions shall be treated as complementary so that both provisions shall be applicable and neither shall narrow the effect of the other, provided that if the provisions are in absolute conflict, the provisions of this treaty shall prevail.

Article 34

This treaty shall bind both parties as soon as the Government of the United States of America notifies the Secretary-General that it has all the powers necessary to fulfil its provisions and the Secretary-General has deposited an instrument of ratification with the Government of the United States of America. The Government of the United States of America shall take every possible step to enable it to give the notification as soon as possible and in any case not later than.

Article 35

This treaty shall remain in force as long as the seat of the United Nations is maintained in the territory of the United States of America.

Article 36

The seat of the United Nations shall only be removed from the territory of the United States of America if the United Nations should so decide.

Article 37

If the seat of the United Nations is removed from the United States of America, the United States of America shall pay to the United Nations an equitable sum for the land in the zone and for all buildings and installations thereon. An expert named by the President of the International Court of Justice shall decide, in default of agreement between the parties, what sum is equitable, having regard to the then value to the United States of America of the lands and of the buildings and installations as well as to the cost incurred by the United Nations in acquiring land and in erecting buildings and installations.

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Annex

Article 1

The United Nations shall possess full juridical personality and in particular, the capacity:

(1) to contract;
(2) to acquire and dispose of immovable and movable property;
(3) to institute legal proceedings.

Article 2

The United Nations, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any particular proceedings or by the terms of any particular contract.

Article 3

The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and from any other form of seizure, whether by executive, administrative or legislative action or otherwise.

Article 4

The archives of the United Nations and in general all documents, belonging to it or held by it, shall be inviolable wherever located.

Article 5

Without being restricted by financial controls, regulations or moratoria of any kind

(1) the United Nations may hold funds or currency of any kind and operate accounts in any currency;
(2) the United Nations shall be free to transfer its funds from one state to another or within any state and to convert any currency held by it into any other currency.

Article 6

In exercising its right under Article 3 above the United Nations shall have regard to any representations by the national authorities of any Member in so far as effect can be given to the representations without detriment to the financial interests of the Organization.

Article 7

The United Nations, its assets, income and other property shall be:—

(1) exempt from all direct taxes, it being understood, however, that the United Nations cannot claim exemption from charges for services rendered;
(2) exempt from customs duties in respect of articles imported by the United Nations for its official use and in respect of publications issued by it, it being understood, however, that articles imported free of customs duty will not be sold in the state into which they were imported except under conditions agreed with the authorities of that state.

Article 8

While the United Nations does not in principle claim exemption from sales taxes and excise duties, which form part of the price of goods sold, nevertheless when the United Nations is making large purchases for official use of goods on which such taxes and duties have been charged or are chargeable, the United States of America, wherever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article 9

The communications of the United Nations shall enjoy treatment not less favourable than that accorded by the United States of America to any of its Members in the matter of: franking privileges; priorities, rates and taxes on cables, telegrams, radiograms, telephotos, and telephone communications; use of codes, and couriers and pouches; and press rates for information to the press and radios, when originating with or addressed to the Secretary-General and the heads of the specialized agencies, or their duly authorized deputies. No censorship or delays shall apply to the transmission of the correspondence and communications of the United Nations.

Article 10

Representatives of Members to the organs of the United Nations and to conferences convened by the United Nations shall be accorded, while exercising their functions and during their journey to and from the place of meeting, the following facilities, privileges and immunities:

(1) immunity from legal process of any kind;

(2) immunity from immigration restrictions, alien registration and national service obligations;

(3) facilities as regards exchange restrictions not less favourable than those accorded by the United States of America to diplomatic representatives of the Governments of Members;

(4) immunities and facilities as regards their personal baggage not less favourable than those accorded by the United States of America to diplomatic representatives of the Governments of Members.

Article 11

As a means of securing complete freedom of speech and independence in the discharge of their duties, the representatives of Members to the organs of the United Nations and to conferences convened by the United Nations shall be accorded immunity from legal process in respect of all acts done and words spoken or written by them in the discharge of their duties.

Article 12

The provisions of Article 10 (1) and (2) and of Article 11 cannot be invoked by any citizen of the United States of America against the authorities of the United States of America.

Article 13

In Articles 10, 11 and 12 "representatives" includes all representatives, alternate representatives, advisers, technical advisers, and persons of similar status.

Article 14

All officials[1] of the United Nations shall:

(1) be immune from legal process with respect to acts performed by them in their official capacity;

(2) be exempt from taxation on the salaries and emoluments paid to them by the Organization;

(3) be immune from national service obligations;

(4) be immune, together with their spouses and minor children, from immigration restrictions and alien registration;

(5) be accorded exchange facilities no less favourable than those accorded to the officials of comparable ranks of the Governments of other Members;

(6) be given together with their spouses and minor children repatriation facilities not less favourable than those accorded to diplomatic representatives in time of international crisis.

Article 15

In addition to the immunities in Article 14 the Secretary-General, all Assistant Secretaries-General, their spouses and minor children shall be accorded the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, their spouses and minor children in accordance with international law, but shall not be entitled to invoke before the courts of the state of which they are nationals immunity-from legal process as regards matters not connected with their official duties.

Article 16

United Nations passports issued by the Organization to its officials and to comparable officials of specialized agencies shall be given treatment not less favourable than that accorded by the United States of America to passports issued by Members.

Article 17

Applications for visas from the holders of United Nations passports, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with with the minimum of delay. In addition they shall be granted facilities for speedy travel.

Article 18

Similar facilities to those specified in Article 17 shall be accorded to experts and other persons who, though not officials of the United Nations, have a certificate that they are travelling on the business of the Organization.

Article 19

The Secretary-General, Assistant Secretaries-General, and Directors travelling on United Nations passports on the business of the Organization shall be granted the same facilities as are accorded diplomatic envoys.

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[1] By this word it is intended to cover all ranks of the Secretariat and all those who have to make the declaration of loyalty to the Organization (Chapter VIII, section 3, Regulation 2), but not to include local employees, such as office cleaners, motor car drivers, etc.

Article 20

Privileges and immunities are granted to officials in the interests of the Organization and not for the benefit of the officials themselves. The Secretary-General shall waive the immunity of any official if, in his opinion, the immunity can be waived without prejudice to the interests of the United Nations.

Article 21

The United Nations shall co-operate at all times with the appropriate authorities of the United States of America to facilitate the proper administration of justice, secure the execution of police regulations and prevent the occurrence of any abuse in connection with the immunities and facilities provided for in this Annex. In particular the Secretary-General shall ensure that the drivers of all official motor cars of the United Nations and all officials who own or drive motor cars shall be properly insured against third party risks.

Article 22

The United Nations shall make provision for appropriate modes of settlement of:

(1) disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party;

(2) disputes involving any official of the United Nations, who by reason of his official position enjoys immunity, if the immunity has not been waived by the Secretary-General.

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(79) Resolution XIII, 6 B, relating to negotiation with the competent authorities of the United States of America concerning the arrangements required as a result of the establishment of the seat of the United Nations in the United States of America and text of a draft convention to be transmitted as a basis of discussion for these discussions, adopted by the General Assembly, 13 February 1946 [1]

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(80) Proposed United States Comments upon Convention Between the United Nations and the Government of the United States Regarding Arrangements for the Permanent Headquarters

(Square brackets indicate matter to be deleted. Underscoring indicates matter to be added. Comments are identified by footnote numbers corresponding to those placed in text where changes are proposed. There are also additional numbered comments not relating to specific proposed changes.)

Prepared in Division of International Organization Affairs Department of State, May 18, 1946.

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[1] Document not reproduced. *[Note by the Registry.]*

The attached is a working paper prepared for use in the Department of State. It is not a proposal made by the United States to the United Nations. In the course of negotiations, the United States may withdraw any suggestions contained herein and may make additional suggestions. Subsequent to duplication of the document under date of May 18, it has been revised as indicated by ink corrections and typed inserts. May 23, 1946.

. . . . . .

Article III

LAW AND AUTHORITY IN THE ZONE

Section 10

[The zone, including the air space above it and the subsoil below it, shall be inviolable.]

The official premises shall have the same inviolability as is accorded to foreign embassies in the United States.

Comment:

(1) Inviolability would seem to be needed only for the "official premises" (as defined in Section 1) as distinct from other premises owned by the United Nations or privately owned premises within the zone.

(2) The term "inviolable" standing alone is too vague. Even if its technical meaning is established, it is susceptible to popular misunderstanding. The suggested wording has the advantage of making use of a body of laws and customs which is fairly well defined. It would also tend to allay the public fear that land occupied by the United Nations would in effect be ceded by the United States.

(3) This section should be read in the light of Section 3 of the General Convention which provides that "The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action."

Section 11

[Save as otherwise provided in this convention, the zone shall be under the control and authority of the United Nations.][1]

Comment:

(1) This section seems inconsistent with Section 15 which states that the law of the United States shall apply to the zone. Moreover, the other sections of Article III specify the control and authority which the United Nations is to have over the official premises and the rest of the zone. Residual authority should be in the United States. It is suggested, therefore, that this section be omitted.

Section 12

[Without prejudice to the generality of Section 11, the Government of the United States of America renounces jurisdiction over any matters relating to][1] The Secretary-General may control entry into the official premises [the zone] and prescribe the conditions under which persons may remain or reside there. [and over any matters relating to the construction or removal of buildings in the zone.][2]

Comment:

(1) Language such as the United States "renounces jurisdiction" should be avoided. There is no objection, however, to stating the Secretary-General's authority to control entry to the official premises.

As a practical matter it is doubtful if this section is necessary except for whatever effect it may have to reassure the United Nations. The rights of a property owner in the United States in combination with the inviolability of premises granted by Section 10 would seem to give the United Nations everything which this section seeks to give with respect to the official premises. There should be no right of exclusion from the rest of the zone.

(2) The provision relating to construction and removal of buildings is adequately covered by Sections 16 and 16a.

Section 13

[Officers or officials of any authority in the territory of the United States of America, whether administrative, judicial, military, or police, shall not enter the zone to perform any official duties therein except with the permission of and under conditions agreed by the Secretary-General. The service of legal process, including the seizure of private property, shall take place within the zone under conditions approved by the Secretary-General.]

Comment:

This section may be omitted as it is covered by the redraft of Section 10 and by Section 14.

In lieu of the above section, this would seem an appropriate place to insert a section reserving the right to innocent passage by air and the use and maintenance of transportation, communication and other public utility facilities which may traverse the zone, as follows:

> Nothing in this convention shall be construed as prohibiting (a) transit by air over the official premises or other parts of the zone by aircraft authorized to operate over the United States or (b) the uninterrupted use and maintenance of through highways, public streets, rail lines, pipelines, transmission lines, or other public utility facilities, unless such facilities are owned by the United Nations. With respect to the original purchase referred to in Section 3, any facilities to which this section applies shall be identified in Annex 1. With respect to any additional lands which may be conveyed to the United Nations pursuant to Section 3, ownership of any such facilities and the right to use and maintain them may be reserved by the United States on behalf of the original owner.

Section 14

Without prejudice to the provisions which are contained in [Appendix II and subsequently in][1] the General Convention referred to in Section [32], 34, and which relate to the immunities of officials of the United Nations and of the representatives of Members, the United Nations shall not permit the [zone] official premises[2] to become a refuge either for persons who are avoiding arrest under the law of the United States of America or are required by the Government of the United States for extradition to another country, or for persons who are endeavoring to avoid service of legal process, including the seizure of private property.[3]

Comment:

(1) This is to conform to the change suggested in Section 32.
(2) Since, under the suggestions made above, the official premises would be the only area that is inviolable, this section can be so limited.
(3) See comment under Section 13.

Section 15

[Subject to Section 16] Except as otherwise provided in this Convention,[1] the law of the United States of America shall apply within the zone (including the official premises), and in particular the ordinary civil and criminal law.

Comment:

(1) This change clearly leaves United States law in effect until such time as the United Nations may have acted within the scope of the authority which is granted to it not only by Section 16 but by other provisions of this agreement.
(2) See comment under Section 11.

Section 16

The United Nations may enact administrative regulations [making provisions of an administrative character for the zone] governing the conduct of persons while in the official premises.[1,2] [Any such regulation shall prevail over any provisions in the law of the United States of America which are inconsistent with it.][3] The United Nations may not impose any penalties for violation of such regulations other than expulsion or exclusion from the zone, and may not detain any person who is accused of such violation if he elects to remain outside of the official premises pending a determination as to whether he has commited such violation.[4] It is agreed that within the zone (including the official premises) the protection afforded by the Constitution of the United States to personal liberty and to the basic human freedoms of expression and worship shall not be lessened, and no form of racial discrimination shall be permitted.

. . . . . .

Section 16A

With respect to that part of the zone which does not constitute the official premises, it is recognized that there should be appropriate provisions with respect to the erection of new buildings, the establishment of commercial enterprises, the

laying of new streets, and similar matters pertaining to zoning, in order to protect the amenities of the zone as a community suitable for the efficient functioning of the United Nations and for its growth as contemplated in Section 3. The United States will use its good offices with the appropriate authorities of the state or states or subdivisions thereof, in which the zone is located, to the end that arrangements giving the United Nations appropriate protection in this matter may be made.

Comment:

In addition to acquiring further land under Section 3 and the various privileges accorded elsewhere in this agreement and the General Convention, it would seem that some sort of zoning protection is probably the only privilege which the United Nations needs with respect to that part of the zone which does not constitute official premises.

Section 17

The federal, state, and local[1] courts of the United States of America shall, [without prejudice to any provisions of Appendix II and subsequently of the General Convention referred to in Section 32,][2] have jurisdiction over acts done and transactions taking place in the official premises and the zone, in the same manner as they have over similar acts and transactions taking place outside the zone.

Comment:

(1) Change made to specify the courts, in lieu of definition in Section 1 of term "courts of the United States of America".

(2) Omitted as unnecessary.

Section 18

The federal, state and local[1] courts of the United States of America, when dealing with cases arising out of or relating to acts done or transactions taking place in the zone, shall take cognizance of the regulations enacted by the United Nations under Section 16,[2] though they shall not be obliged to inflict penalties for infraction of such regulations [unless the Government of the United States of America has agreed to these regulations] except as may be provided by laws or regulations adopted by the appropriate American authorities.[3]

Comment:

(1) Change made to specify the courts in lieu of definition in Section 1.

(2) It is not clear what is meant by the phrase "take cognizance". This requires further exploration. It is doubtful whether this section is necessary at all. If the United Nations does not need any sanction for its own regulations other than expulsion and exclusion from the zone, Section 17 would seem to make all necessary provision with respect to jurisdiction of American courts.

(3) If this section should be considered necessary, it should be made clear that the only penalties imposed by American courts should be those prescribed by American law.

Article IV

COMMUNICATIONS AND TRANSIT TO AND FROM THE ZONE

Section 19

The [Government of the United States of America] appropriate American authorities [1] shall [guarantee at all times adequate means of] at no time impose any impediments to transit or [2] communication to and from the zone, as well as between any non-contiguous parts of the zone [3] through the territory of the United States of America, for the passage of persons having business with the United Nations, the transmission of postal correspondence and telegrams, and the transport of goods required for use and consumption in the official premises or by the United Nations elsewhere in the zone.

Comment:

(1) To conform to change proposed in Section 1.

(2) It is felt that a "guarantee" would be too sweeping an undertaking. The obligation to impose no impediments, plus the obligation under Section 28 to provide protection comparable to that afforded to agencies of the United States Government should suffice.

(3) The reference to non-contiguous parts of the zone incorporates part of the subject-matter of Section 9.

Section 20

[Representatives of Members, irrespective of the relations existing between their Government and the Government of the United States of America, officials both of the United Nations and of the specialized agencies, and the families of these representatives and officials, shall at all times enjoy the right of unimpeded and safe [1] transit through the territory of the United States of America to and from the zone.]

Comment:

This section seems to add nothing to Section 19, unless "safe transit" implies a guarantee of physical safety, which should not be undertaken. If reference to the irrelevance of relations between Member Governments and the United States is deemed necessary, it could be included in Section 19.

Section 21

The [accredited] representatives of news agencies, whether press, radio, or films, when accredited by the United Nations, after consultation with the United States, [1] and representatives of nongovernmental organizations recognized by the United Nations for the purpose of consultation under Article 71 of the Charter, [2] shall also enjoy the rights referred to in section 20.

Comment:

(1) Without the suggested change some question might arise as to who was to do the "accrediting" referred to, e.g., private agencies, national governments, or

the United Nations itself. It is understood that the drafters intended accrediting to be by the United Nations.

The reference to "consultation with the United States" is inserted to give the United States some security protection against the use of accredited press representatives as a device for gaining admittance to the United States for undesirable aliens.

(2) Reference to Article 71 of the Charter is in the interest of identifying the organizations mentioned.

(3) The question is raised whether this section and Section 22, read in connection with Section 20, are prejudicial to national security since our right to exclude what may be undesirable aliens is given up. The United States should reserve its position on this section for further consideration. It should at least be understood that the United States might grant limited visas good only for transit to and from the zone and sojourn therein, and that, by appropriate legislation, criminal penalties might be imposed for violation of the terms of such visas.

Section 22[1]

Immigration and other regulations in force in the United States of America, regarding the entry and residence of foreigners, shall not be applied in such a manner as to interfere with the rights referred to in Sections 20 and 21. Visas required by the persons referred to in those sections shall be granted without charge [without delay and without requirement of personal attendance for the issue of the visa] and as promptly as possible[2]

Comment:

(1) This section, as drafted appears to make the issuance of visas a purely ministerial, non-discretionary, function. The change is suggested so as to give United States authorities a reasonable opportunity to determine whether the applicants qualify under Sections 20 or 21 and whether visas should be limited to the zone as suggested in the comment under Section 21.

. . . . . .

Section 23

[The Government of the United States of America shall give or cause to be given facilities for] With respect to the issue of visas [to], and [for] the use of the available means of transport [by], the appropriate American authorities shall in no way discriminate against[1] persons coming from abroad [(other than those referred to in Sections 20 and 21)] who desire to visit the zone for any purpose related to the activities of the United Nations,[2] although they are not persons referred to in Sections 20 and 21. The Secretary-General of the United Nations and the Government of the United States of America shall, at the request of either of them, enter into discussion with regard to the application of this section.[3]

Comment:

(1) In its present form it is not clear whether this section imposes any obligation on the United States to issue visas or provide transportation on more favorable conditions than would be the case with respect to visitors to other parts of the United States. Apparently, no such obligation is intended, and the above changes

are suggested in order to make it clear that the Section merely contemplates that visitors to the zone (other than those covered by Sections 20 and 21) be accorded fair treatment in the light of established standards.

(2) It is not clear who these "persons coming from abroad" are, e.g., students, sight-seers, petitioners, disaffected groups from trust territories, friends or relatives of Secretariat members, etc. The restrictive phrase is suggested in the interest of establishing some criterion for the business of such "persons".

(3) The last sentence of the above section seems to indicate that the previous sentence is merely an expression of policy without specific binding effect.

Section 24

The provisions of this article shall not prevent the Government of the United States of America from taking precautions in the interests of national security, provided that such precautions shall not have the effect of interfering with the rights referred to in Sections 19, 20 and 21.[1]

Comment:

See comments above with respect to the three sections referred to.

Article V

RESIDENT REPRESENTATIVES TO THE UNITED NATIONS

[*Section 25*

Persons accredited to the United Nations by Members as resident representatives and their staffs, whether residing inside or outside the zone, shall be recognized by the Government of the United States of America as entitled on its territory to the same privileges and immunities as that Government accords to the diplomatic envoys accredited to it, and the staffs of those envoys.]

Comment:

In practice, the number of "resident representatives" may increase considerably in the years to come. If all of them and their staffs receive diplomatic privileges and immunities in pursuance of this section, the result may be detrimental to local public relations. It is recommended that this section be eliminated, the privileges and immunities of representatives then resting upon Section 11 of the General Convention which gives most of the customary diplomatic privileges except immunity from suit in respect of their non-official actions and exemption from customs duties on goods imported for personal use after original entry.

. . . . . .

Section 39

Any difference between the United Nations and the Government of the United States of America concerning the interpretation or application of this convention or of any supplementary agreement [or agreement] which is not settled by negotiation or other agreed mode of settlement shall be referred [to the arbitration of an umpire appointed for the purpose by the President of the International Court of Justice.] for arbitration, to a tribunal of three arbitrators, one to be

named by the Secretary-General, one to be named by the Government of the United States of America, and the third to be chosen by the other two or, if they should fail to agree upon a third, then by the President of the International Court of Justice.

Comment:

(1) It is felt that a tribunal of three would make possible the presence in judgment of at least one arbitrator with common-law background.

(2) For some types of cases it would be preferable to invoke the jurisdiction of the full Court. However, Article 34 of the Statute of the International Court provides that only states may be parties in cases before the Court.

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(81) Negotiations between the United Nations and the United States concerning the Arrangements Required as a Result of the Establishment of the Seat of the United Nations in the United States — Sixth Meeting

18 June 1946, 10.45 a.m.

SD/A/NC.6.

Present:

For the United Nations Secretary-General:

Mr. Ivan Kerno, Assistant Secretary-General for Legal Affairs;
Mr. Marc Schreiber, Legal Adviser to the United Nations, and Secretary to the United Nations Delegation.

For the United Nations Advisory Committee:

Mr. Hugh McKinnon-Wood (United Kingdom) (Chairman)
Mr. A. H. Body (Australia)
Mr. Joseph Nisot (Belgium)
Mr. Carlos Salamanca (Bolivia)
M. Jean Cahen-Salvador (France)
Mr. Awni el Khalidy (Iraq).

For the State of Connecticut:

Mr. Arthur F. Brown, Assistant Solicitor-General
Mr. Baldwin.

For the United States Government:

Mr. Alger Hiss, Department of State
Mr. I. N. P. Stokes, Department of State
Mr. John Maktos, Department of State
Mr. Carl Marcy, Department of State
Mr. William V. Whittington, Department of State
Mr. Herzel Plaine, Department of Justice.

Section 5. Representatives of the United Nations who had studied the two tentative drafts submitted in the previous meeting as substitutes for the first sentence of Section 5, submitted language as follows:

> "For any real property acquired by the United States of America at the request of the United Nations for conveyance pursuant to Section 3, the

United Nations shall pay to the United States the actual cost, if any, to the United States of any such acquisition. In case owners of land in the zone which is not so conveyed shall be held to be entitled under the constitutional requirements of the United States to compensation by the United States for the taking of an interest in their land by the creation of the zone, the question of any reimbursement to the United States for such compensation shall be made the subject of discussion, with a view to an equitable settlement between the United Nations and the United States, taking in account all the economic consequences of the creation of the zone."

Discussion of the last phrase of this proposed language indicated some doubt as to the scope of the term "economic consequences", the United States representatives feeling that this phrase meant that the effect on land values of private property owners would have to be taken into account. The United States representatives felt that only economic consequences which affected the local, state, or federal governments should be considered.

Agreed: That the reference to economic consequences be eliminated and the settlement of any disputes as to compensation be made on the basis of the word "equitable". It was agreed that such settlement would take into account the profits, if any, which would accrue to the United States authorities as a result of increased tax rates.

Agreed: That it was the consensus of the meeting that the language as amended implied that the question of an equitable settlement would be one which would be referred to arbitration under Sections 38 and 39, in the event the parties to the instrument cannot agree upon the compensation to be made.

During the discussion of Section 5, representatives of the State of Connecticut suggested that there should be included in this instrument language to the effect that the United Nations would give all due and friendly consideration to any problems which might arise in connection with the possible displacement of residents or with loss of tax revenues, decrease of land values, and other problems affecting the localities involved. It was the feeling of the Connecticut representatives that such a provision might forestall criticism from residents in the area of the headquarters.

The United Nations representatives felt that this type of provision should not be included in the instrument and preferred that the matter be mentioned only in a communiqué which might be issued at the time the agreement is made public. The United States representatives suggested that reference might be made to the problem of tax reimbursements either in a footnote to the instrument or in a note at the end.

There was reference to a discussion which had taken place at the first meeting of the committee during which there had been agreement that the United Nations representatives would seek a resolution by the General Assembly which would have the effect of reassuring local residents with reference to the tax problem. The United Nations representatives then referred to a resolution adopted by the Headquarters Committee of the General Assembly on February 13, 1946, and expressed the opinion that since the report of the Headquarters Committee had been adopted by the General Assembly, the General Assembly had, in effect, made the resolution its own. They felt, therefore, that it was not necessary for a new resolution to be submitted to the General Assembly. The suggestion was also made by representatives of the United Nations that the matter of reassurances for tax reimbursements was more properly one to be considered by the Headquarters Committee.

In the absence of an agreement as to the way in which this matter should be handled, the United States representative stated that when the text of this

agreement is made public the United States would want to make it clear in the release that the February 13th resolution was designed to reassure localities concerned on the tax reimbursement problem.

Sections 15 and 16. Written comments on these sections by Mr. Tepliakov, the Soviet representative on the Negotiating Committee who was not able to be present, were considered. It was the consensus of the meeting that the substitution of the word "may" for the word "shall" in Section 15 as suggested by Mr. Tepliakov would change the nature of the agreement which had been approved by the General Assembly and submitted to the Secretary-General for his use in negotiations with the United States.

Mr. Tepliakov's comment to the effect that under Sections 38 and 39 disputes arising under Section 16 would be decided finally by the Supreme Court of the United States was considered and it was pointed out that Section 38 had been amended so that the appeal in case of a dispute would be either to arbitration or to the International Court of Justice. In order to meet Mr. Tepliakov's suggestion that the United States Government would not be bound to accept a settlement under Section 38, the words "for final decision" were inserted after the word "referred" in Section 38.

Agreed: To leave Section 16 as drafted.

Section 17. Slight drafting changes were made in this Section.

Mr. Tepliakov raised in his memorandum the question as to the jurisdiction of federal, state and local courts over disputes between the United Nations and the United States. It was pointed out that disputes between the United Nations and the United States would not be subject to the jurisdiction of the United States courts but would be settled in accordance with the provisions of Sections 38 and 39.

Sections 18 and 19. The phrase in Section 18 "though they shall not be obliged to inflict penalties for violation of such regulations except as may be provided by laws or regulations adopted by the appropriate American authorities" was eliminated in accordance with the suggestion of Mr. Tepliakov. It was the feeling of the meeting that the second sentence of Section 19 covers the same subject.

Section 20. After considerable discussion, during the course of which the United States representatives submitted an amendment to this Section providing that in the case of excessive construction costs for new roads the United Nations should agree to bear an equitable share of the cost, it was concluded that it was difficult to be too specific as to assessing costs in this Section until the exact whereabouts of the permanent site is known.

Agreed: That the words "public roads as specified in Annex 1" be substituted for the word "highways" and that the remainder of Section 20 as it appears in the June 15th draft remain as drafted. Thus the question of what public roads are to be constructed and maintained was deferred for treatment in an annex to be prepared when the permanent site of the United Nations is known.

Section 21. Mr. Tepliakov's observations to the effect that this Section is acceptable provided the provisions therein are not inconsistent with the privileges and immunities provision of the General Convention, was noted and it was agreed that there were no inconsistencies.

Section 22. Slight drafting changes were made in this Section.

Section 23. No changes were made in this Section.

Section 24. There was discussion of the meaning of the phrase "enter into discussions with a view to facilitate entrance" and it was agreed that the phrase "consult as to methods of facilitating entrance" should be substituted.

The meeting adjourned.

(82) Negotiations between the United Nations and the United States concerning the Arrangements Required as a Result of the Establishment of the Seat of the United Nations in the United States — Seventh Meeting

18 June 1946, 3.15 p.m.

SD/A/NC/7.

Present:

For the United Nations Secretary-General:

Mr. Ivan Kerno, Assistant Secretary-General for Legal Affairs;
Mr. Marc Schreiber, Legal Adviser to the United Nations and Secretary to the United Nations Delegation.

For the United Nations Advisory Committee:

Mr. Hugh McKinnon-Wood (United Kingdom) (Chairman)
Mr. A. H. Body (Australia)
Mr. Joseph Nisot (Belgium)
Mr. Carlos Salamanca (Bolivia)
M. Jean Cahen-Salvador (France)
Mr. Awni el Khalidy (Iraq).

For the State of New York:

Mr. Orrin Judd.

For the State of Connecticut:

Mr. Arthur F. Brown, Assistant Solicitor-General
Mr. Baldwin.

For the United States Government:

Mr. Charles Fahy (Principal Representative)
Mr. Alger Hiss, Department of State
Mr. I. N. P. Stokes, Department of State
Mr. Carl Marcy, Department of State
Mr. William V. Whittington, Department of State
Mr. Herzel Plaine, Department of Justice.

Section 25. There was a slight drafting change in this section.

Agreed: That the minutes should show that Section 25 is not intended to prevent the United States from applying quarantine and health regulations in a reasonable manner and in a way that will not unduly interfere with the entry of persons entitled to come to the headquarters district.

Section 26. There was a slight drafting change in this section.

Agreed: That there is no conflict between the provisions of Sections 12 and 26 and that Section 26 is made necessary by reason of the fact that the United Nations cannot "build a fence around the headquarters district", therefore making it necessary for the United States to be able to control the entry into the headquarters district of persons, not privileged by Article IV, who may have arrived at the headquarters district by air, for example, without having traversed United States territory.

Section 27. Mr. Tepliakov's comments were read to the effect that this section should be reworded so as to make it clear that members of families should receive diplomatic privileges and immunities. There was some discussion of this point and it was the understanding of the meeting that according to diplomatic practice families of diplomatic personnel normally receive the immunities accorded to the heads of the families.

Agreed: That without mentioning families in Section 27, it was understood that they should receive the same degree of diplomatic privileges and immunities as the families of diplomatic envoys in Washington receive.

There was an inconclusive discussion as to whether domestic servants are assimilated to the families of diplomatic envoys and should therefore receive some of the privileges and immunities conferred upon the principal representatives and other categories covered by Section 27, or whether domestics are members of the mission's staff and therefore under Section 27 would receive diplomatic privileges and immunities only if it were so agreed.

Mr. Tepliakov's request that the provision of Section 27 providing for agreement to determine the members of the staffs who should receive diplomatic privileges and immunities was considered, but in the light of discussions held at an earlier meeting at which Mr. Tepliakov was not present, it was agreed that the provision, as drafted, should be maintained. During the course of this discussion the thought was expressed that a "reasonable number" of the staff would be included and that the determination of the number to be included would be made upon the basis of the functions performed by the individual members of the staff.

It was pointed out that those members of the staff who do not receive full diplomatic privileges and immunities would, in fact, receive privileges and immunities as provided by provisions of the General Convention.

Section 28. In response to a question as to what was meant by the phrase "bodies of persons", it was pointed out that this section was designed to impose upon the American authorities the duty of exercising due diligence to be sure that groups of persons do not enter the headquarters district. So far as individuals, as distinct from groups of persons, are concerned, it was felt that the United Nations guards themselves would be able to take care of them.

Agreed: It was agreed to substitute the word "groups" for the word "bodies".

Section 29. There were a few drafting changes made in this section.

Section 30. Consideration was given to Mr. Tepliakov's written statement covering the use of the phrase "using such services for similar purposes".

Agreed: That this section would be amended to eliminate that phrase.

There was discussion as to whether the section clearly covers the supplying on equitable terms of municipal services such as fire protection, snow removal, etc.

Agreed: To reword this section so as to include reference to fire protection and snow removal, thus making it clear that the municipal services would be supplied to the United Nations on equitable terms. There was a brief discussion as to whether persons living in the headquarters district would be permitted to send their children to public schools provided by the state, and if so, whether the Organization should not, therefore, pay taxes. It was pointed out that persons living within the headquarters district would probably be viewed as non-residents of the school district and, therefore, if their children attend public schools it will be necessary for them to pay fees as non-residents. On the other hand, if these persons reside outside the headquarters district they will be subject to property taxes and will be residents within a school district.

Section 31. The United States representative suggested that there should be inserted in the minutes a statement to the effect that any agreement as to the establishment of an airport should make provision for the protection of the amenities of land surrounding the airport.

Section 32. There was no objection to this section. It was pointed out that both the states of New York and Connecticut have anti-discrimination laws.

Sections 33, 34, 35, 36, 37, 38 and 39 were approved or changed only slightly.

Section 40. This section was renumbered to read, "Section 41" and Section 41 was renumbered to read "Section 42". This change was made necessary by the

insertion of a new Section 40 (last sentence of old Section 1 *(c)*) reading as follows:

> "Wherever this convention/agreement imposes obligations on the appropriate American authorities, the Government of the United States of America shall have the ultimate responsibility for the fulfillment of such obligations by the appropriate American authorities."

Section 40 (Section 41). This section was amended at the suggestion of the United States representative to read as follows:

> "This convention/agreement shall be construed in the light of its primary purpose to enable the United Nations at its headquarters in the United States of America, fully and efficiently to discharge its responsibilities and fulfill its purposes."

Section 41 (Section 42). There were no changes made in this section.

The United States representative indicated that it would be several days before he would be able to give his approval to the instrument. It was agreed that it might be possible to make arrangements in the near future for a meeting in New York, at which time final approval could be given.

The representative of the Secretary-General indicated that, if the Secretary-General approves the draft instrument, he will probably submit the approved draft instrument to the General Assembly with the request that it authorize the Secretary-General to conclude the agreement with the United States subject to such minor changes as might be necessary.

Before the meeting adjourned the principal representatives of the United Nations and the United States, as well as the representatives from New York and Connecticut expressed their satisfaction at the conduct of the negotiations and the spirit of cooperation which had been present throughout the discussions.

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(83)	Joint report by the Secretary-General and the Negotiating Committee on the negotiations with the authorities of the United States of America concerning the arrangements required as a result of the establishment of the seat of the United Nations in the United States of America [1]	*General Assembly, Official Records*, Sixth Committee, legal questions (A/67, 1 September 1946), Annex 25
(84)	Convention Agreement between the United Nations and the United States of America [1]	*General Assembly, Official Records*, Sixth Committee, legal questions (A/67/Add.1), Appendix I
(85)	Report by the Secretary-General on the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed at Lake Success on 26 June 1947 [1] *(Original text: English and French)*	*General Assembly, Official Records*, Sixth Committee, legal questions, Annex 11 (A/371, 3 September 1947)

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[1] Document not reproduced. *[Note by the Registry.]*

(86)	Arrangements required as a result of the establishment of the Permanent Headquarters of the United Nations in the United States of America [1]	*General Assembly*, second part of first session, sixty-fifth plenary meeting, 14 December 1946, resolution 99 (I)
(87)	Report of Sub-Committee 1 on privileges and immunities on the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (A/C.6/172, 17 October 1947) [1]	*General Assembly*, *Official Records*, Sixth Committee, legal questions, Annex 11*a* (A/371)
(88)	Rapport de la Sixième Commission sur l'accord entre l'Organisation des Nations Unies et les Etats-Unis d'Amérique relatif au siège de l'Organisation des Nations Unies [2]	*Documents officiels de l'Assemblée générale*, Sixième Commission, annexe 9b (A/427)
(89)	Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations [1]	*General Assembly*, second session, resolution 169 (II)

2. Legislative History of Public Law No. 80-357

Materials relating to the United States legislation

(90) Message from the President of the United States Transmitting an Agreement between the United States and the United Nations Concerning the Control and Administration of the Headquarters of the United Nations in the City of New York; and a Copy of a Letter from the Secretary of State Regarding this Agreement

To the Congress of the United States:

I transmit herewith for the consideration of the Congress an agreement between the United States and the United Nations concerning the control and administration of the headquarters of the United Nations in the city of New York. I also enclose a letter from the Secretary of State regarding this agreement.

As you will recall, on December 10 and 11, 1945, the Congress by concurrent resolution unanimously invited the United Nations to locate its permanent headquarters in the United States. After long and careful study, the General Assembly of the United Nations decided during its session last winter to make its permanent home in New York City.

The United States has been signally honored in the location of the headquarters of the United Nations within our country. Naturally the United States wishes to make all appropriate arrangements so that the Organization can fully and effectively perform the functions for which it was created and upon the successful accomplishment of which so much depends.

This agreement is the product of months of negotiations between representatives of this Government and the United Nations. Representatives of the city and State of New York participated in these negotiations. The agreement carefully

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[1] Document not reproduced. *[Note by the Registry.]*
[2] Document non reproduit. *[Note du Greffe.]*

balances the interests of the United States as a member of the United Nations and the interests of the United Nations as an international organization.

I urge the Congress to give early consideration to the enclosed agreement and to authorize this Government, by joint resolution, to give effect to its provisions.

When the General Assembly of the United Nations meets in New York City this fall it would be most appropriate if this Government were ready for its part to bring the agreement into effect.

Harry S. TRUMAN.

The White House, July 2, 1947.

(Enclosures: (1) Draft agreement between the United States and the United Nations; (2) letter from the Secretary of State.)

State Department
Washington, June 30, 1947.

The President,
The White House:

There is enclosed for your consideration and for transmission to the Congress, if you approve, an agreement between the United States and the United Nations regarding the control and administration of the headquarters of the United Nations in the city of New York.

This agreement has been signed on behalf of the United States by the Secretary of State and on behalf of the United Nations by the Secretary-General. By its terms, it is to be brought into effect by an exchange of notes duly authorized pursuant to appropriate action by the Congress of the United States and by the General Assembly of the United Nations which is to convene in September.

Article 104 of the Charter of the United Nations provides that —

> the Organization shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

Article 105 provides in part that —

> the Organization shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfillment of its purposes —

and that the General Assembly —

> may make recommendations with a view to determining the details of the application —

of this provision.

The General Assembly of the United Nations during the first part of its first session in January 1946 requested the Secretary-General, with the assistance of a committee composed of representatives of 10 member nations, to negotiate with the competent authorities of the United States the arrangements required as a result of the establishment of the seat of the United Nations in the United States. A draft for a headquarters agreement describing such arrangements between the United States and the United Nations was also transmitted by the General

Assembly to the Secretary-General for use as a basis for discussion in such negotiations. Since the United States was also to be a party to the negotiations, the United States representative took no position in the Assembly on the proposed draft.

During the first part of its first session, the General Assembly also adopted the convention on the privileges and immunities of the United Nations, which was transmitted to the Congress by the Department of State earlier this year. That convention was designed to describe the rights of the United Nations and its personnel and representatives of member states on the territory of each of the member states. The agreement, which is enclosed, deals, on the other hand, with the special arrangements to be made with the United States as a result of the establishment of its permanent headquarters in this country.

The first stage of negotiations between the United States and the United Nations leading up to the headquarters agreement was completed in June 1946 with a draft which was stipulated to be preliminary only and subject to revision after the precise location of the headquarters had been determined. This draft was submitted to the General Assembly at its session during the fall of 1946.

Following the selection of the site, in December 1946, the General Assembly authorized the Secretary-General to negotiate and conclude an agreement, to come into force when approved by the General Assembly. In negotiating this agreement, he was directed to be guided by the provisions of the draft of June 1946.

Further extensive negotiations, in which representatives of the city and State of New York participated, have resulted in the enclosed agreement.

I desire at this time to invite your attention to certain provisions of the agreement.

Article III, which concerns law and authority in the headquarters district, is the result of a careful attempt to grant to the United Nations the freedom from certain types of regulation which is necessary to assure that the Organization may exercise its functions and fulfill its purposes without restraint, and in all other respects to preserve the normal operation of Federal, State, and local law.

Section 7 states that the Federal, State, and local law of the United States is generally applicable within the headquarters district and that Federal, State, and local courts have jurisdiction over acts done and transactions taking place in the headquarters district. The United Nations is given authority by section 8 to make regulations within the headquarters district for the purpose of establishing conditions therein necessary for the fulfillment of its functions. Federal, State, or local laws which are inconsistent with such regulations shall be inapplicable to the extent of such inconsistency. However, any question which the American authorities may have as to whether such regulations go beyond the necessities of the United Nations, and which cannot be settled by agreement, may be resolved by arbitration or by reference to the International Court of Justice.

The headquarters district, which consists of an area of six city blocks, is to be inviolable as provided in section 9 *(a)*. This means that Federal, State, or local officers shall not enter the district to perform official functions therein except with the consent of the Secretary-General of the United Nations. This inviolability is similar to that which is extended to diplomatic missions in Washington. It does not transfer sovereignty over United States territory to the United Nations.

Section 9 *(b)* makes it clear that the headquarters district is not to become a refuge for persons avoiding arrest.

It is necessary for the United Nations to be assured that persons having legitimate business with the Organization can have access to the headquarters district. Thus, section 11 provides that the Federal, State, or local authorities are

not to impose any impediments to transit to or from the headquarters district by certain limited categories of persons set forth in that section.

Section 13 *(b)*, however, makes it clear that persons who abuse these privileges may be deported either in accordance with the deportation laws of the United States (subject to the approval of the Secretary of State) or may be required to leave the United States in accordance with the customary procedure applicable to diplomatic envoys accredited to the United States. Section 13 *(b)* makes it clear that the United States may issue limited visas, valid only for the area comprising the headquarters district and its immediate vicinity.

Other provisions of the agreement concern such matters as telecommunications facilities (sec. 4), police protection (Art. VI), diplomatic privileges and immunities for a limited group of representatives of foreign governments (sec. 15), the settlement of disputes arising under the agreement (sec. 21), and the disposition of the headquarters if it should cease to be used for the headquarters of the United Nations (sec. 22).

In most cases the obligations assumed by the United States under the agreement are made the responsibility of the "appropriate American authorities" who are defined in section 1 *(b)* as —

> such Federal, State, or local authorities in the United States as may be appropriate in the context and in accordance with the laws and customs of the United States, including the laws and customs of the State and local governments involved.

Section 25, however, makes it clear that the ultimate responsibility for compliance with the agreement on the part of the United States rests with the Federal Government.

The agreement provides, in section 20, for such supplemental agreements with the appropriate American authorities as may be necessary to fulfill the purposes of the agreement. Thus, detailed arrangements with respect to police and fire protection and similar matters may be made directly with the local authorities. I suggest that the joint resolution authorizing the President to make the agreement effective, include authorization to the local authorities to enter into such supplemental agreements subject, except in emergency or in case of routine matters, to the approval of the Secretary of State.

This Government has taken a leading role in the creation of the United Nations. The enclosed agreement will make clear to the United Nations that the United States is prepared to discharge fully its responsibilities as the host of the Organization on which rest the hopes of the world for lasting peace.

Respectfully submitted.

G. C. MARSHALL.

(Enclosure: Agreement between the United States and the United Nations.)

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(91) *Congressional Record*. Proceedings and Debates of the 80th Congress, First Session. Permanent Headquarters of United Nations

PERMANENT HEADQUARTERS OF UNITED NATIONS

Mr. Ives. Mr. President, yesterday the President of the United States sent a message to the Congress transmitting an agreement which has been made between

the United States and the United Nations concerning the control and administration of the United Nations headquarters in the city of New York. In the message the President urged early consideration of the matter by the Congress and asked that appropriate action be taken by joint resolution to bring about the effectiveness of the agreement, in so far as this country is concerned. The senior Senator from New York [Mr. Wagner] and myself have been granted the privilege of introducing an appropriate joint resolution authorizing the President to bring into effect an agreement between the United States and the United Nations for the purpose of establishing permanent headquarters of the United Nations in the United States and authorizing the taking of measures necessary to facilitate compliance with the provisions of such agreement, and for other purposes.

Mr. President, I now ask unanimous consent to introduce this joint resolution and to have it referred to the appropriate committee.

The President *pro tempore*. Without objection, the joint resolution will be received and referred to the Committee on Foreign Relations.

There being no objection, the joint resolution (S.J.Res. 144) authorizing the President to bring into effect an agreement between the United States and the United Nations for the purpose of establishing the permanent headquarters of the United Nations in the United States and authorizing the taking of measures necessary to facilitate compliance with the provisions of such agreement; and for other purposes, introduced by Mr. Ives (for himself and Mr. Wagner), was received, read twice by its title and referred to the Committee on Foreign Relations.

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(92) Excerpts from S.Rep. No. 559, 80th Cong., 1st Sess. (1947) Dated 15 July 1947 wherein the Committee on Foreign Relations Recommended Passage of Two Joint Resolutions[1]

AUTHORIZING THE PRESIDENT TO ACCEPT ON BEHALF OF THE GOVERNMENT OF THE UNITED STATES THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Mr. Vandenberg, from the Committee on Foreign Relations, submitted the following Report (To accompany S.J.Res. 144 and S.J.Res. 136).

The Senate Committee on Foreign Relations, having had under consideration the joint resolution (S.J.Res. 144) authorizing the President to bring into effect the agreement between the United States and the United Nations relating to the headquarters of the United Nations, and the joint resolution (S.J.Res. 136) authorizing the President to accept on behalf of the United States the convention on the privileges and immunities of the United Nations, unanimously report the resolutions favorably to the Senate with amendments and recommend that they do pass.

MAIN PURPOSES OF THE AGREEMENTS

The main purposes of the two agreements may be summarized briefly as follows: (1) The headquarters agreement deals with those special arrangements to

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[1] The two joint resolutions were reported on together to the Senate due to the Committee's view that they were closely related (i.e.) one (S.J.Res. 144) dealing with the Headquarters Agreement and the administration and control of United Nations Headquarters, and the second (S.J.Res. 136) dealing with defining the rights of the United Nations, its personnel, etc.

be made between the United States and the United Nations as a result of the establishment of the permanent headquarters of the United Nations in this country. (2) The convention on privileges and immunities of the United Nations is of a multilateral character and is designed to define the rights of the United Nations, its personnel, and the representatives of member states in the territory of each of the members. Since the two agreements are very closely related, the committee has adopted the procedure of reporting them together to the Senate.

COMMITTEE HEARINGS

On July 10, 12, and 15 the committee met in executive session and examined in detail the provisions of the headquarters agreement and the convention on privileges and immunities. Mr. Charles Fahy, Legal Adviser of the Department of State; Mr. I. N. P. Stokes, Associate Chief of the Division of International Organization Affairs; and Mr. Carl Marcy, assistant legislative counsel of the Department of State, appeared before the committee. Members of the committee were fully aware of the responsibilities of the United States as host to the United Nations, but at the same time they were particularly concerned lest the obligations assumed by the United States result in the admission of undesirable aliens into the country. Following the approval of three amendments to the resolution, the committee unanimously agreed to report them to the Senate.

OBLIGATIONS OF THE UNITED STATES AS HOST TO THE UNITED NATIONS

Article 104 of the Charter of the United Nations provides that —

> the Organization shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

Article 105 provides in part that —

> the Organization shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfillment of its purposes —

and that the General Assembly —

> may make recommendations with a view to determining the details of the application —

The obligations of the Charter are equally incumbent on all member nations. It is clear, however, that the country in which the headquarters of the United Nations are located is under a special responsibility as host to assure that arrangements are made which will permit the efficient functioning of the Organization within this framework of its laws.

DEVELOPMENTS LEADING TO THE CONCLUSION OF THE GENERAL CONVENTION AND THE HEADQUARTERS AGREEMENT

One of the most important questions left open by the Charter was the selection of the site for the headquarters of the United Nations. While this matter was pending, the Congress by concurrent resolution unanimously invited the United Nations "to locate the site of the United Nations Organization within the United States". It was in the light of this invitation that the choice of a site was made by the General Assembly.

One of the tasks undertaken at the first session of the General Assembly was to

propose a convention to the member nations defining the privileges and immunities which were to be granted the United Nations under Article 105 of the Charter. The convention on privileges and immunities of the United Nations (sometimes referred to as the "general convention") was adopted by the General Assembly for this purpose. At the time of its adoption, the United States delegation made clear that the United States was reserving its position with respect to immunity from income taxes and national service as applied to American citizens.

It was also recognized during the first session of the General Assembly that it would be necessary to have a separate agreement defining in more detail the arrangements to be made between the United Nations and the United States as the host country. To this end, the Assembly requested the Secretary-General to negotiate the necessary arrangements with the United States and appointed to assist him in the negotiations a committee consisting of the representatives of 10 member nations.

Negotiation of the headquarters agreement commenced in June 1945 and was completed with the signing of the agreement on June 26, 1946. Representatives of the city and State of New York participated in the negotiations and have recorded their approval of the agreement and the resolution which would authorize its being put into effect. The Department of Justice likewise participated and the agreement has been cleared through all interested Federal agencies through the Executive Office of the President.

RELATIONSHIP BETWEEN THE HEADQUARTERS AGREEMENT AND THE GENERAL CONVENTION

As has been noted above, the principal difference between the two instruments is that the general convention is a multilateral instrument defining the privileges and immunities of the United Nations and its personnel on the territory of all member nations, whereas the headquarters agreement is a bilateral instrument defining the particular arrangements which are considered necessary as between the United Nations and the United States arising out of the location of the headquarters of the United Nations in this country.

The headquarters agreement covers many matters which are not mentioned in the general convention. Both instruments are concerned with the privileges and immunities of the personnel of the United Nations and representatives of the member governments. The principal difference in this respect is that the headquarters agreement is concerned with the problems created by the residence of such personnel in this country as distinct from their rights as occasional visitors, which are covered by the general convention. Some overlapping is unavoidable. Inconsistency in legal effect is prevented by the provision in section 26 of the headquarters agreement that, although both instruments are to be given full effect whenever possible, the headquarters agreement prevails in case of absolute conflict.

RELATIONSHIP TO EXISTING LAW

Both instruments, when operative, will have the effect of amending any inconsistent provisions of existing law. The principal law now in effect dealing with the same subject-matter is the International Organizations Immunities Act which became law in December 1945.

The act was passed for the general purpose of defining the privileges, exemptions, and immunities to be accorded to international organizations in the United States and their officers, employees, and representatives of member governments. At the time the act became law, such international organizations as

UNRRA, FAO of the United Nations, and the Pan American Union were already in operation in the United States. It was contemplated that the act would take care of requirements of such agencies and it was also hoped that it would cover the principal requirements of the United Nations, although it was too soon to know just what these requirements would be since the first session of the General Assembly of the United Nations had not yet been held.

SUMMARY OF THE PROVISIONS OF THE HEADQUARTERS AGREEMENT

Attention is invited to the following most important provisions of the headquarters agreement:

Article II. This article authorizes the United Nations to establish and operate certain radio facilities and provides that, if it should be found necessary to establish and operate an aerodrome or a postal service, arrangements with respect to the same shall be covered in supplemental agreements with the United States.

Article III, one of the most important in the agreement, concerns law and authority in the headquarters district. The purpose of Article III is to grant to the United Nations the freedom from certain types of domestic regulations which is necessary to assure that the Organization may exercise its functions and fulfill its purposes without restraint; and in all other respects to preserve the normal operation of Federal, State, and local law. Although the headquarters district is inviolable (sec. 9 *(a)*), as was the property of the League of Nations in Switzerland, the United Nations is under an obligation to prevent the headquarters district from becoming a refuge for persons avoiding arrest (sec. 9 *(b)*). Federal, State, and local laws of the United States operate within the headquarters district and the jurisdiction of Federal courts extends to acts and transactions taking place within the headquarters district. The only exception is that the United Nations is given power to make regulations, operative within the district, for the purpose of establishing conditions therein necessary to the full execution of its functions (sec. 8). The only penalty which the United Nations may apply in enforcing these regulations is to expel or exclude persons from the headquarters district (sec. 10). In the event of a conflict between such regulations and the law of the United States, the conflict is to be settled as provided in section 21.

Article IV. It is necessary for the United Nations to be assured that persons having legitimate business with the Organization can have access to the headquarters district. Thus, section 11 provides that the Federal, State, or local authorities are not to impose any impediments to transit to or from the headquarters district by certain limited categories of persons set forth in that section.

Section 13 *(b)*, however, makes it clear that persons who abuse these privileges may be deported either in accordance with the deportation laws of the United States (subject to the approval of the Secretary of State) or may be required to leave the United States in accordance with the customary procedure applicable to diplomatic envoys accredited to the United States. Section 13 *(b)* also makes it clear that the United States may issue limited visas, valid only for the area comprising the headquarters district and its immediate vicinity.

Article V. This article provides that limited classes of representatives of member states of the United Nations are to be entitled in the United States "to the same privileges and immunities" as are accorded to diplomatic envoys accredited to the United States, subject, however, "to corresponding conditions and obligations". Thus, a limited group of the more important representatives to the United Nations will receive the same diplomatic status as their colleagues in Washington who are accredited to the United States Government. Provision is made for a

physical limitation of the area in which such immunities may be claimed in the cases of representatives of members who are not recognized by the United States.

PRINCIPAL ISSUES CONSIDERED BY THE COMMITTEE IN CONNECTION WITH THE HEADQUARTERS AGREEMENT

It is clear that the United States cannot tell the other member nations who should or who should not represent them at the seat of the United Nations and cannot claim any right of veto over the Secretary-General's appointment of personnel to the staff of the United Nations. In general, the United States, as host country, must permit access to the headquarters on the part of all persons who have legitimate business with the Organization. This involves inevitably the admission of a number of aliens, some of whom would not normally be admissible under immigration laws of the United States.

The principal problem considered by the committee was how this right of access to the headquarters could be granted in a manner which would not prejudice the security of the United States against infiltration on the part of subversive alien elements.

The agreement, in sections 11 and 13, grants the right of entry to representatives of members, officials of the United Nations, and other persons having business with the United Nations. Two important protections are, however, provided in section 13: (1) The United States may require such persons to have visas and may limit the visas which it issues so as to be valid only for transit to the headquarters district and sojourn in its immediate vicinity; (2) in case any such persons abuse their privileges in activities outside their official capacity, they become subject to deportation. In order to be sure that this remedy will be applied in a fair manner, it is provided that deportation proceedings are to be subject to the approval of the Secretary of State, that full hearings must be granted to the interested parties, and that the limited class of persons enjoying diplomatic status may be required to leave only in accordance with diplomatic procedure.

It is the opinion of the committee that these provisions adequately protect the security of the United States and that the United Nations could not be expected to maintain its headquarters in this country if the United States were to impose restrictions upon access to the headquarters district which would interfere with the proper functioning of the Organization.

In order to remove any doubt as to the meaning of these provisions the committee adopted an amendment to Senate Joint Resolution 144 making it clear that there is no amendment, or obligation to amend, the immigration laws in any way except to give effect to the rights referred to above.

AMENDMENTS RECOMMENDED BY THE COMMITTEE

In order to meet objections raised during the hearings and to further clarify the position of the United States with respect to the two agreements, the committee recommends the following amendments to the two resolutions:

1. Amendment to Senate Joint Resolution 144

Add a new section to the resolution as follows:

Sec. 6. Nothing in the agreement shall be construed as in any way diminishing, abridging, or weakening the right of the United States completely to control the entrance of aliens into any territory of the United States other than the headquarters district and its immediate vicinity and such areas as it is reasonably necessary to traverse in transit between the same and foreign countries. Moreover,

nothing in section 14 of the agreement with respect to facilitating entrance into the United States by persons who wish to visit the headquarters district and do not enjoy the right of entry provided in section 11 of the agreement shall be construed to amend or suspend in any way the immigration laws of the United States or to commit the United States in any way to effect any amendment or suspension of such laws.

RECOMMENDATION OF THE FOREIGN RELATIONS COMMITTEE

In view of the considerations outlined above and in view of the constant desire of the United States to encourage and facilitate the work of the United Nations, the Foreign Relations Committee recommends the approval of Senate Joint Resolution 144 and Senate Joint Resolution 136 with appropriate amendments.

The committee further urges the Senate to consider the resolutions and the agreements at the earliest possible date, since it is highly desirable for the United States to register its approval to these instruments before the General Assembly of the United Nations convenes in the fall.

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(93) Joint resolution (S.J.Res. 144), *Congressional Record* of 17 July 1947

PERMANENT HEADQUARTERS OF UNITED NATIONS

The Senate proceeded to consider the joint resolution (S.J.Res. 144) authorizing the President to bring into effect an agreement between the United States and the United Nations for the purpose of establishing the permanent headquarters of the United Nations in the United States and authorizing the taking of measures necessary to facilitate compliance with the provisions of such agreement, and for other purposes, which had been reported from the Committee on Foreign Relations with an amendment, on page 7, after line 15, to insert a new section, so as to make the joint resolution read:

Resolved, etc., That the President is hereby authorized to bring into effect on the part of the United States the agreement between the United States of America and the United Nations regarding the headquarters of the United Nations, signed at Lake Success, N.Y., on June 26, 1947 (hereinafter referred to as the "agreement"), with such changes therein not contrary to the general tenor thereof and not imposing any additional obligations on the United States as the President may deem necessary and appropriate, and at his discretion, after consultation with the appropriate State and local authorities, to enter into such supplemental agreements with the United Nations as may be necessary to fulfill the purposes of the said agreement.

Sec. 2. For the purpose of carrying out the obligations of the United States under the said agreement and supplemental agreements with respect to United States assurances that the United Nations shall not be dispossessed of its property in the headquarters district, and with respect to the establishment of radio facilities and the possible establishment of an airport:

(a) The President of the United States, or any official or governmental agency authorized by the President, may acquire in the name of the United States any property or interest therein by purchase, donation, or other means of transfer, or may cause proceedings to be instituted for the acquisition of the same by condemnation.

(b) Upon the request of the President, or such officer as the President may designate, the Attorney General of the United States shall cause such condemnation or other proceedings to be instituted in the name of the United States in the district court of the United States for the district in which the property is situated and such court shall have full jurisdiction of such proceedings, and any condemnation proceedings shall be conducted in accordance with the act of August 1, 1888 (25 Stat. 357) as amended, and the act of February 26, 1931 (46 Stat. 1421) as amended.

(c) After the institution of any such condemnation proceedings, possession of the property may be taken at any time the President, or any such officer he may designate, determines is necessary, and the court shall enter such orders as may be necessary to effect entry and occupancy of the property.

(d) The President of the United States, or any officer or governmental agency duly authorized by the President, may, in the name of the United States, transfer or convey possession of and title to any interest in any property acquired or held by the United States, pursuant to paragraph *(a)* above, to the United Nations on the terms provided in the agreement or in any supplemental agreement, and shall execute and deliver such conveyances and other instruments and perform such other acts in connection therewith as may be necessary to carry out the provisions of the agreement.

(e) There are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be required to enable the United States to carry out the undertakings hereby authorized.

Sec. 3. The President, or the Secretary of State under his direction, is authorized to enter into agreements with the State of New York or any other State of the United States and to the extent not inconsistent with State law, with any one or more of the political subdivisions thereof in aid of effectuating the provisions of the agreement.

Sec. 4. Any States, or to the extent not inconsistent with State law any political subdivisions thereof, affected by the establishment of the headquarters of the United Nations in the United States are authorized to enter into agreements with the United Nations or with each other consistent with the agreement and for the purpose of facilitating compliance with the same: *Provided*, That, except in cases of emergency and agreements of a routine contractual character, a representative of the United States, to be appointed by the Secretary of State, may, at the discretion of the Secretary of State, participate in the negotiations, and that any such agreement entered into by such State or States or political subdivisions thereof shall be subject to approval by the Secretary of State.

Sec. 5. The President is authorized to make effective with respect to the temporary headquarters of the United Nations in the State of New York, on a provisional basis, such of the provisions of the agreement as he may deem appropriate, having due regard for the needs of the United Nations at its temporary headquarters.

Sec. 6. Nothing in the agreement shall be construed as in any way diminishing, abridging, or weakening the right of the United States completely to control the entrance of aliens into any territory of the United States other than the headquarters district and its immediate vicinity and such areas as it is reasonably necessary to traverse in transit between the same and foreign countries. Moreover, nothing in section 14 of the agreement with respect to facilitating entrance into the United States by persons who wish to visit the headquarters district and do not enjoy the right of entry provided in section 11 of the agreement shall be construed to amend or suspend in any way the immigration laws of the United States or commit the United States in any way to effect any amendment or suspension of such laws.

Mr. Fulbright. Mr. President, may we have an explanation of the joint resolution?

The President *pro tempore*. If the Senate will permit the Chair to make the explanation from the Chair, this is the joint resolution which implements the United States agreement for the relationship between the City of New York, the State of New York, and the United Nations site, plus the establishment of the usual diplomatic immunity so far as the Government of the United States is concerned. It has the approval of the mayor of New York, the Governor of New York, the State Legislature of New York, and the unanimous report of the Foreign Relations Committee.

The question is on agreeing to the amendment reported by the committee.

The amendment was agreed to.

The joint resolution was ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

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(94) Excerpts from H.R. Rep. No. 1093, 80th Cong., 1st Sess. (1947)

Mr. Smith of Wisconsin, from the Committee on Foreign Affairs, submitted the following Report (to accompany S.J.Res. 144).

The Committee on Foreign Affairs, to whom was referred the joint resolution (S.J.Res. 144) authorizing the President to bring into effect an agreement between the United States and the United Nations for the purpose of establishing the permanent headquarters of the United Nations in the United States and authorizing the taking of measures necessary to facilitate compliance with the provisions of such agreement, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the joint resolution as amended do pass.

The amendments are as follows:

On page 4, first unnumbered line, strike out the words "a copy of which is annexed hereto"; and insert in lieu thereof "which agreement is incorporated herein;".

On page 4, line 15, strike out the word "agreement" and the period and insert in lieu thereof

> agreement: *Provided*, That any supplemental agreement entered into pursuant to section 5 of the agreement incorporated herein shall be submitted to the Congress for approval. The agreement follows:

On page 6, line 14, strike out the word "authorized" and the period and substitute in lieu thereof the following words:

> authorized: *Provided*, That any money appropriated under this authorization shall be spent only on a basis of reimbursement by the United Nations in accordance with section 3 of the agreement, and that the money thus reimbursed shall be deposited and covered into the Treasury of the United States as miscellaneous receipts.

On page 7, line 18, after the word "States" insert the following words:

> To safeguard its own security and

On page 7, line 20, strike out the word "vicinity" and substitute in lieu thereof the following words:

vicinity, as to be defined and fixed in a supplementary agreement between the Government of the United States and the United Nations in pursuance of section 13 (3) (e) of the agreement.

ACTION TO DATE

The President urged upon Congress favorable action on the agreement in a message of July 2, 1947, published as House Document No. 376, Eightieth Congress.

A draft joint resolution prepared by the Department of State to authorize the President to bring the headquarters agreement into effect was introduced in the Senate by Senators Ives and Wagner, of New York. No legislation was introduced in the House. The Senate passed the joint resolution on July 17, with one amendment, which will be discussed below. The joint resolution was forwarded to the House on July 18, and was referred to the Committee on Foreign Affairs, which assigned it to Subcommittee No. 6 on International Organizations and International Law for study.

In anticipation of the legislation the subcommittee had held a hearing on July 10. A further hearing was held on July 19. The principal witness was Mr. Fahy, the chief negotiator for the United States in drawing up the agreement. The hearings dealt with the collective problems of the headquarters agreement and the general convention on United Nations immunities, which was agreed to by the Senate in a joint resolution also on July 17, which joint resolution has also been forwarded to the House.

The report of the subcommittee brought out what were the critical points in the agreement and the accompanying resolution.

FREEDOM OF TRANSIT

Sections 11, 12, 13, and 14, comprising Article IV, deserve particular attention. In studying the relevant provisions, the committee took note that the United States cannot undertake to tell the other member nations who should or who should not represent them at the seat of the United Nations and cannot claim any right of veto over the Secretary-General's appointment of personnel to the staff of the United Nations. In general, the United States, as host country, must permit access to the headquarters on the part of all persons who have legitimate business with the Organization. This involves inevitably the admission of a number of aliens, some of whom would not normally be admissible under immigration laws of the United States. The United States has foreclosed itself in undertaking voluntarily the obligations of the host Government.

It is necessary for the United Nations to be assured that persons having legitimate business with the Organization can have access to the headquarters district. Thus, section 11 provides that the Federal, State, or local authorities are not to impose any impediments to transit to or from the headquarters district by certain limited categories of persons set forth in that section.

Section 13 *(b)*, however, makes it clear that persons who abuse these privileges either may be deported in accordance with the deportation laws of the United States (subject to the approval of the Secretary of State) or may be required to leave the United States in accordance with the customary procedure applicable to diplomatic envoys accredited to the United States. Section 13 *(b)* also makes it clear that the United States may issue limited visas, valid only for the area comprising the headquarters district and its immediate vicinity.

The phrase "immediate vicinity" links the section with section 6 of the joint resolution, providing as follows:

> Sec. 6. Nothing in the agreement shall be construed as in any way diminishing, abridging, or weakening the right of the United States completely to control the entrance of aliens into any territory of the United States other than the headquarters district and its immediate vicinity and such areas as it is reasonably necessary to traverse in transit between the same and foreign countries. Moreover, nothing in section 14 of the agreement with respect to facilitating entrance into the United States by persons who wish to visit the headquarters district and do not enjoy the right of entry provided in section 11 of the agreement shall be construed to amend or suspend in any way the immigration laws of the United States or to commit the United States in any way to effect any amendment or suspension of such laws.

An amendment added by the committee reserves the right of the United States to safeguard its own security along with the right to control entry of aliens into territory other than the headquarters area. This right of self-defense is given expression here as a premise underlying all American policy. This language was inserted in order to make explicit what is a premise of such an agreement in any case.

The committee are aware of the difficulty of trying to clinch a tight restriction with a loose phrase. The term "immediate vicinity" must be given definitive meaning in the arrangements to be worked out between this Government and the Secretary-General in pursuance of section 13 (3) *(e)* of the agreement. This is the purpose of an amendment proposed by the committee.

DIPLOMATIC STATUS

Section 16, in Article V, provides that limited classes of representatives of member states of the United Nations are to be entitled in the United States "to the same privileges and immunities" as are accorded to diplomatic envoys accredited to the United States, subject, however, "to corresponding conditions and obligations". Thus, a limited group of the more important representatives to the United Nations will receive the same diplomatic status as their colleagues in Washington who are accredited to the United States Government. Provision is made for a physical limitation of the area in which such immunities may be claimed in the cases of representatives of members who are not recognized by the United States.

The committee have taken note that the Charter itself, in dealing with the question of immunities, does not specify diplomatic status. It simply states the requirement of such immunity as is necessary for the performance of the function. The United States and the United Nations have come into an agreement that diplomatic status is the necessary formula here. The committee have weighed this same question in relation to the general convention on immunities. While it might be possible to strike out reference to diplomatic status and perhaps renegotiate on a basis that would simply enumerate the privileges granted, to do so would be to concentrate on words rather than substance. The premise of the agreement is that the sum total of the privileges necessary approximates that of diplomatic status, and the committee accept this view.

CONCLUSIONS AND RECOMMENDATIONS

The committee believe the provisions are consistent with the requirements of the United Nations. The committee are aware that the undertaking here proposed is the outcome of an obligation for which the United States, at the instance of the Congress, volunteered. The committee believe that the provisions minimize, as far

as practicable, the danger to national security through granting a limited access to persons who otherwise would not be permitted to enter the United States. The committee therefore recommend that the House concur in Senate Joint Resolution 144 with the proper amendments proposed.

Because it is essential that the United States be in a position to deposit its ratification in advance of the meeting of the General Assembly of the United Nations in the fall, the committee recommend that the House act with dispatch.

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(95) *Congressional Record* of 26 July 1947

(93 Cong. Rec. 10375, 10397, 10400) (1947)

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Farrell, its enrolling clerk, announced that the House had passed the joint resolution (S.J.Res. 144) authorizing the President to bring into effect an agreement between the United States and the United Nations for the purpose of establishing the permanent headquarters of the United Nations in the United States and authorizing the taking of measures necessary to facilitate compliance with the provisions of such agreement, and for other purposes, with amendments, in which it requested the concurrence of the Senate.

HEADQUARTERS OF UNITED NATIONS

The President *pro tempore* laid before the Senate the amendments of the House of Representatives to the joint resolution (S.J.Res. 144) authorizing the President to bring into effect an agreement between the United States and the United Nations for the purpose of establishing the permanent headquarters of the United Nations in the United States and authorizing the taking of measures necessary to facilitate compliance with the provisions of such agreement, and for other purposes, which were, on the first line of page 4 of the preamble, strike out "a copy of which is annexed hereto;" and insert "which agreement is incorporated herein;"; on page 4, line 15, strike out "agreement." and insert "agreement: *Provided*, That any supplemental agreement entered into pursuant to section 5 of the agreement incorporated herein shall be submitted to the Congress for approval. The agreement follows":

On page 6, line 14, strike out "authorized" and insert "authorized: *Provided*, That any money appropriated under this authorization shall be spent only on a basis of reimbursement by the United Nations, in accordance with section 3 of the agreement and that the money thus reimbursed shall be deposited and covered into the Treasury of the United States as miscellaneous receipts"; on page 7, line 18, after "States" insert "to safeguard its own security and", and on page 7, line 20, strike out "vicinity" and insert "vicinity, as to be defined and fixed in a supplementary agreement between the Government of the United States and the United Nations in pursuance of section 13 (3) *(e)* of the agreement."

The President *pro tempore*. This is the House of Representatives counterpart of the Senate action on the United Nations business. Without objection, the Senate will concur in the amendments of the House.

There being no objection, the amendments were concurred in.

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(96) Text of S.J.Res. 144 as enacted into law on 4 August 1947 (Pub. L. No. 80-357)

(United States Code Congressional Service, 80th Congress, First Session pp. 754-765, 61 Stat. 756)

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 1676.
HEADQUARTERS OF THE UNITED NATIONS

Public Law 357 — 80th Congress, Chapter 482 — 1st Session, S.J.Res. 144, Joint Resolution

Authorizing the President to bring into effect an agreement between the United States and the United Nations for the purpose of establishing the permanent headquarters of the United Nations in the United States and authorizing the taking of measures necessary to facilitate compliance with the provisions of such agreement, and for other purposes.

Whereas the Charter of the United Nations was signed on behalf of the United States on June 26, 1945, and was ratified on August 8, 1945, by the President of the United States, by and with the advice and consent of the Senate, and the instrument of ratification of the said Charter was deposited on August 8, 1945; and

Whereas the said Charter of the United Nations came into force with respect to the United States on October 24, 1945; and

Whereas Article 104 of the Charter provides that "The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes"; and

Whereas Article 105 of the Charter provides that:

> "1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.
>
> 2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.
>
> 3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this article or may propose conventions to the Members of the United Nations for this purpose."; and

Whereas Article 28 and other articles of the Charter of the United Nations contemplate the establishment of a seat for the permanent headquarters of the Organization; and

Whereas the interim arrangements concluded on June 26, 1945, by the governments represented at the United Nations Conference on International Organization instructed the Preparatory Commission established in pursuance of the arrangements to "make studies and prepare recommendations concerning the location of the permanent headquarters of the Organization"; and

Whereas during the labors of the said preparatory Commission, the Congress of the United States in H. Con. Res. 75, passed unanimously by the House of Representatives December 10, 1945, and agreed to unanimously by the Senate December 11, 1945, invited the United Nations "to locate the seat of the United Nations Organization within the United States"; and

Whereas the General Assembly on December 14, 1946, resolved "that the permanent headquarters of the United Nations shall be established in New York City in the area bounded by First Avenue, East Forty-eighth Street, the East River, and East Forty-second Street"; and

Whereas the General Assembly resolved on December 14, 1946, "That the Secretary-General be authorized to negotiate and conclude with the appropriate authorities of the United States of America an agreement concerning the arrangements required as a result of the establishment of the permanent headquarters of the United Nations in the city of New York" and to be guided in these negotiations by the provisions of a preliminary draft agreement which had been negotiated by the Secretary-General and the Secretary of State of the United States; and

Whereas the General Assembly resolved on December 14, 1946, that pending the coming into force of the agreement referred to above "the Secretary-General be authorized to negotiate and conclude arrangements with the appropriate authorities of the United States of America to determine on a provisional basis the privileges, immunities, and facilities needed in connection with the temporary headquarters of the United Nations."; and

Whereas the Secretary of State of the United States, after consultation with the appropriate authorities of the State and city of New York, signed at Lake Success, New York, on June 26, 1947, on behalf of the United States an agreement with the United Nations regarding the headquarters of the United Nations, which agreement is incorporated herein; and

Whereas the aforesaid agreement provides that it shall be brought into effect by an exchange of notes between the United States and the Secretary-General of the United Nations: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized to bring into effect on the part of the United States the agreement between the United States of America and the United Nations regarding the headquarters of the United Nations, signed at Lake Success, New York, on June 26, 1947 (hereinafter referred to as the "agreement"), with such changes therein not contrary to the general tenor thereof and not imposing any additional obligations on the United States as the President may deem necessary and appropriate, and at his discretion, after consultation with the appropriate State and local authorities, to enter into such supplemental agreements with the United Nations as may be necessary to fulfill the purposes of the said agreement: *Provided*, That any supplemental agreement entered into pursuant to section 5 of the agreement incorporated herein shall be submitted to the Congress for approval. The agreement follows:

* * *

Sec. 2. For the purpose of carrying out the obligations of the United States under said agreement and supplemental agreements with respect to United States assurances that the United Nations shall not be dispossessed of its property in the headquarters district, and with respect to the establishment of radio facilities and the possible establishment of an airport:

(a) The President of the United States, or any official or governmental agency authorized by the President, may acquire in the name of the United States any property or interest therein by purchase, donation, or other means of transfer, or may cause proceedings to be instituted for the acquisition of the same by condemnation.

(b) Upon the request of the President, or such officer as the President may designate, the Attorney-General of the United States shall cause such condemnation or other proceedings to be instituted in the name of the United States in the district court of the United States for the district in which the property is situated and such court shall have full jurisdiction of such proceedings, and any condemnation proceedings shall be conducted in accordance with the Act of August 1, 1888 (25 Stat. 357), as amended, and the Act of February 26, 1931 (46 Stat. 1421), as amended.

(c) After the institution of any such condemnation proceedings, possession of the property may be taken at any time the President, or such officer as he may designate, determines is necessary, and the court shall enter such orders as may be necessary to effect entry and occupancy of the property.

(d) The President of the United States, or any officer or governmental agency duly authorized by the President, may, in the name of the United States, transfer or convey possession of and title to any interest in any property acquired or held by the United States, pursuant to paragraph *(a)* above, to the United Nations on the terms provided in the agreement or in any supplemental agreement, and shall execute and deliver such conveyances and other instruments and perform such other acts in connection therewith as may be necessary to carry out the provisions of the agreement.

(e) There are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be required to enable the United States to carry out the undertakings hereby authorized: *Provided*, That any money appropriated under this authorization shall be spent only on a basis of reimbursement by the United Nations in accordance with section 3 of the agreement, and that the money thus reimbursed shall be deposited and covered into the Treasury of the United States as miscellaneous receipts.

Sec. 3. The President, or the Secretary of State under his direction, is authorized to enter into agreements with the State of New York or any other State of the United States and to the extent not inconsistent with State law, with any one or more of the political subdivisions thereof in aid of effectuating the provisions of the agreement.

Sec. 4. Any States, or to the extent not inconsistent with State law any political subdivisions thereof, affected by the establishment of the headquarters of the United Nations in the United States are authorized to enter into agreements with the United Nations or with each other consistent with the agreement and for the purpose of facilitating compliance with the same: *Provided*, That, except in cases of emergency and agreements of a routine contractual character, a representative of the United States, to be appointed by the Secretary of State, may, at the discretion of the Secretary of State, participate in the negotiations, and that any such agreement entered into by such State or States or political subdivisions thereof shall be subject to approval by the Secretary of State.

Sec. 5. The President is authorized to make effective with respect to the temporary headquarters of the United Nations in the State of New York, on a provisional basis, such of the provisions of the agreement as he may deem appropriate, having due regard for the needs of the United Nations at its temporary headquarters.

Sec. 6. Nothing in the agreement shall be construed as in any way diminishing, abridging, or weakening the right of the United States to safeguard its own security and completely to control the entrance of aliens into any territory of the United States other than the headquarters district and its immediate vicinity, as to be defined and fixed in a supplementary agreement between the Government of the United States and the United Nations in pursuance of section 13 (3) *(e)* of the agreement, and such areas as it is reasonably necessary to traverse in transit

between the same and foreign countries. Moreover, nothing in section 14 of the agreement with respect to facilitating entrance into the United States by persons who wish to visit the headquarters district and do not enjoy the right of entry provided in section 11 of the agreement shall be construed to amend or suspend in any way the immigration laws of the United States or to commit the United States in any way to effect any amendment or suspension of such laws.

Approved August 4, 1947.

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3. Question of Access to Headquarters of Representatives of Non-Governmental Organizations[1]

(97)	Resolution 606 (VI). Application of the Headquarters Agreement to Representatives of Non-Governmental Organizations, adopted by the General Assembly, on the report of the Sixth Committee, 1 February 1952	
(98)	Resolution 455 (XIV). Application of the Headquarters Agreement to Representatives of Non-Governmental Organizations (General Assembly resolution 606 (VI)), adopted by the Economic and Social Council, fourteenth session, 25 June 1952	
(99)	Access to Headquarters of Representatives of Non-Governmental Organizations	Economic and Social Council, *Official Records*, fifteenth session, 679th meeting, 9 April 1953 (E/SR.679)
(100)	Memorandum by the Legal Department on the Access to Headquarters of Representatives of Non-Governmental Organizations	Economic and Social Council, *Official Records*, fifteenth session, Annexes, document E/2397, 10 April 1953
(101)	Question of Access to Headquarters of Representatives of Non-Governmental Organizations in Consultative Status. Progress report by the Secretary-General on negotiations with the United States of America concerning the interpretation of the Headquarters Agreement	Economic and Social Council, *Official Records*, sixteenth session, item 33 (E/2492, 27 July 1953)
(102)	Question of Access to Headquarters of Representatives of Non-Governmental Organizations in Consultative Status: Report by the Secretary-General on the Result of the Negotiations with the United States Government (Council decision of 28 April 1953) (E/2386, E/2397, E/2492, E/L.493 and E/L.560)	Economic and Social Council, *Official Records*, sixteenth session, 743rd meeting, 31 July 1953. Agenda item 33 (E/SR.743)
(102 *a*)	Admission of the Representatives of the Women's International Democratic Federation for Participation in the Commission on the Status of Women, in Accordance with the Resolution Adopted by the Commission (E/2386, E/2397 and E/L.493)	Economic and Social Council, *Official Records*, fifteenth session, 686th meeting, 15 April 1953. Agenda item 34 (E/SR.686)

[1] Documents not reproduced. *[Note by the Registry.]*

(102 *b*)	Admissions of Representatives of the Women's International Democratic Federation for Participation in the Commission on the Status of Women in Accordance with the Resolution Adopted by the Commission (E/2386, E/2397 and E/L.493) *(continued)*	Economic and Social Council, *Official Records*, fifteenth session, 687th meeting, 15 April 1953. Agenda item 34 (E/SR.687)
(103)	Question of Access to Headquarters of Representatives of Non-Governmental Organizations on Consultative Status: Report by the Secretary-General on the Result of his Negotiations with the United States Government (Council decision of 28 April 1953) (E/2386, E/2397, E/2492, E/L.493 Rev.1, E/L.560 and E/L.561) (resumed from the 743rd meeting)	Economic and Social Council, *Official Records*, sixteenth session, 745th meeting, 1 August 1953. Agenda item 33 (E/SR.745)
(104)	Resolution 509 (XVI). Question of Access to Headquarters of Representatives of Non-Governmental Organizations in Consultative Status, adopted by the Economic and Social Council, sixteenth session, 745th plenary meeting, 1 August 1953	
(104 *a*)	Annual Report of the Secretary-General on the work of the Organization, 1 July 1953-30 June 1954. See pp. 100-101: Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations	General Assembly, *Official Records*, ninth session, Supplement No. 1 (A/2663).
(104 *b*)	Repertory of Practice of United Nations Organs, Supplement No. 1, Volume II (Art. 105). See: *(b)* Right of transit and freedom of access to the United Nations Headquarters district or conference area, paragraphs 26 and 27	
(104 *c*)	Non-Governmental Organizations *(concluded)*	Economic and Social Council, *Official Records*, twenty-first session, 923rd meeting, 3 May 1956. Agenda item 17

Part IV. Materials Relating to the Proceedings Subsequent to the Request by the General Assembly for an Advisory Opinion

1. Documents of the Forty-second Session of the General Assembly (Resumed), 18-23 March 1988[1]

(105)	Report of the Committee on Relations with the Host Country. Report of the Secretary-General. Addendum. Annex I: Letter dated	A/42/915/Add.2 (mimeographed)

[1] Documents not reproduced. *[Note by the Registry.]*

	11 March 1988 from the Acting Permanent Representative of the United States to the United Nations addressed to the Secretary-General. Annex II: Letter dated 11 March 1988 from the Permanent Observer of the Palestine Liberation Organization to the United Nations addressed to the Secretary-General. Appendix: Letter dated 11 March 1988 from the Attorney General of the United States of America to the Permanent Observer of the Palestine Liberation Organization to the United Nations	
(106)	Report of the Committee on Relations with the Host Country. Report of the Secretary-General. Addendum. Annex I: Letter dated 15 March 1988 from the Secretary-General addressed to the Acting Permanent Representative of the United States to the United Nations	A/42/915/Add.3 (mimeographed)
(107)	Letter dated 17 March 1988 from the Permanent Representative of Saudi Arabia to the United Nations addressed to the Secretary-General. Annex: Communiqué issued by the twenty-sixth session of the Ministerial Council of the Gulf Co-operation Council, held at Riyadh from 27 to 28 Rajab A.H. 1408 (15-16 March A.D. 1988)	A/42/930S/19642 (mimeographed)
(108)	General Assembly, forty-second session, Agenda item 136, Report of the Committee on Relations with the Host Country — Afghanistan, Algeria, Bahrain, Bangladesh, Benin, Brunei Darussalam, Bulgaria, Burkina Faso, Byelorussian Soviet Socialist Republic, Colombia, Comoros, Congo, Cuba, Czechoslovakia, Democratic Yemen, Djibouti, Ethiopia, German Democratic Republic, Ghana, Guyana, India, Indonesia, Iraq, Islamic Republic of Iran, Jordan, Kuwait, Lao People's Democratic Republic, Lebanon, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mali, Malta, Mauritania, Mexico, Mongolia, Morocco, Nepal, Nicaragua, Oman, Pakistan, Panama, Peru, Philippines, Poland, Qatar, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Syrian Arab Republic, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, Vanuatu, Viet Nam, Yemen, Yugoslavia, Zambia and Zimbabwe: draft resolution	A/42/L.48 (mimeographed)
(109)	General Assembly, Provisional Verbatim Record of the 105th meeting, 18 March 1988	A/42/PV.105 (mimeographed)

(110)	General Assembly, Provisional Verbatim Record of the 106th meeting, 21 March 1988	A/42/PV.106 (mimeographed)
(111)	General Assembly, Provisional Verbatim Record of the 107th meeting, 22 March 1988	A/42/PV.107 (mimeographed)
(112)	General Assembly, Provisional Verbatim Record of the 108th meeting, 23 March 1988	A/42/PV.108 (mimeographed)
(113)	General Assembly, Provisional Verbatim Record of the 109th meeting, 22 March 1988	A/42/PV.109 (mimeographed)
(114)	Letter dated 22 March 1988 from the Permanent Representative of Tunisia to the United Nations addressed to the Secretary-General. Annex I: Letter dated 14 March 1988 from the Permanent Observer of the Palestine Liberation Organization to the United Nations addressed to the Attorney General of the United States of America. Annex II: Letter dated 21 March 1988 from the Attorney General of the United States of America to the Permanent Observer of the Palestine Liberation Organization to the United Nations	A/42/939 (mimeographed)
(115)	Resolution 42/230. Report of the Committee on Relations with the Host Country, adopted by the General Assembly, 23 March 1988	A/RES/42/230 (mimeographed)

2. Other Materials

(116) Justice Department Briefing Regarding: Closing of the Palestinian Liberation Organization Observer Mission to the United Nations, Friday 11 March 1988

Mr. Eastland: Good afternoon, I'm Terry Eastland. With me is Chuck Cooper. Chuck, as many of you know, is the Assistant Attorney General in charge of the Office of Legal Counsel. He is here to discuss the issues involving our decision in regard to the PLO Observer Mission. I should note to you that we have handed out two pieces of paper for your use. One, of course, is the letter from the Attorney General that was hand-delivered this morning in New York, this, to the Observer Mission of the PLO, as well as the Law. And I should just note to you, this is a copy of the Bill as it was introduced and this is actually as it was passed as well.

So, with that, here is Mr. Cooper.

Mr. Cooper: Earlier today, the Attorney General caused to be delivered to the PLO Observer Mission to the United Nations in New York, a letter that each one of you has been handed. For purposes of the recording of these proceedings, I will read the pertinent provisions of the letter.

"Dear Mr. Terzi,

I am writing to notify you that on March 21, 1988, the provisions of the Anti-Terrorism Act of 1987, as enacted by Congress, and approved on December 22nd, 1987, will become effective. The Act prohibits, among other things, the Palestine Liberation Organization from establishing or maintaining an office within the jurisdiction of the United States.

Accordingly, as of March 21, 1988, maintaining the PLC Observer Mission

> to the United Nations in the United States, will be unlawful. The legislation charges the Attorney General with the responsibility of enforcing the Act. To that end, please be advised that should you fail to comply with the requirements of the Act, the Department of Justice will forthwith take action in the United States Federal Courts to insure your compliance."

That's the relevant portion of the letter. In passing the Anti-Terrorism Act, which the administration, you may already know, opposed for a variety of reasons, Congress clearly and unambiguously stated its intent. The Act prohibits the PLO from maintaining an office in the United States. The plain language of this provision directly applies to the PLO's Observer Mission to the United Nations.

In addition, the legislative history of this statute further demonstrates that one of Congress' express purposes in passing the Act was to close the Observer Mission in New York.

Now it has been argued that the provision of the Act requiring closure of the PLO Observer Mission violates our obligations under international law. For more than a century, however, the Supreme Court has held that Congress has the authority to abrogate treaties and international law for the purpose of domestic law. Here, Congress has chosen irrespective of international law, to ban the presence of all PLO offices in this country, including the presence of the PLO Observer Mission to the UN.

In disclosing our obligation to enforce the law — in discharging — excuse me — our obligation to enforce the law, the only responsible course is to respect and follow that congressional decision.

As I mentioned earlier, the Department has notified the PLO Observer Mission that it is required to close on March 21, 1988. And that, if it does not comply with that requirement, that we will take expeditious action in Federal Court.

I'll be happy to answer any questions you may have.

Ruth?

Q: Sure. Are you saying that you agree with all allegations — can you say whether you agree or disagree with the allegations that this violates neither international law or the treaty?

Mr. Cooper: No, I am not saying whether we agree or disagree with that — with those legal arguments. It really isn't necessary to inquire into those legal points, because Congress has decided that without regard to what international law, or what — or regard to what the UN Headquarters Agreement may provide, the PLO Observer Mission to the UN shall be closed. In other words, international law, to the extent it is contrary, has been superseded by this statute.

Q: Well, is it contrary, in your analysis?

Mr. Cooper: We have not deemed it necessary to come to a definitive conclusion on that. The examination that we have given to it suggests to us that that is not an open and shut legal issue, but we haven't had to, nor have we come to a definitive conclusion on that. Yes, sir?

Q: What happens now, if, for example, the United Nations makes application to either US courts or The Hague — the World Court of Justice? What would be your position? Have you attempted send a representative to represent the US at the application hearing?

Mr. Cooper: We have determined that we would not participate in any forum, either the arbitral tribunal that might be constituted under Article XXI, as I understand it, of the UN Headquarters Agreement, or the International Court of Justice. As I said earlier, the statute has superseded the requirements of the UN Headquarters Agreement to the extent that those requirements are inconsistent

with the statute, and therefore, participation in any of these tribunals that you cite would be to no useful end. The statute's mandate governs, and we have no choice but to enforce it. Yes, sir?

Q: Have you heard at all whether the United Nations legal counsel is going to come into court on this?

Mr. Cooper: I don't know what the latest status of that – of their thinking is. The last time I did know was on the occasion of a visit to — with Mr. Fleischhauer, and it was my understanding that they did have that in mind at the time. That's been —

Q: Well, what day was that?

Mr. Cooper: Oh, that's been three or four week ago, now, so that's — that would not be news. I don't know what their latest thinking on that is.

Q: Can you explain the timing of this? Why wasn't it done a month ago when the decision was apparently made? Or why couldn't it have been delayed for another month when it wouldn't be so disruptive to the — (inaudible) —

Mr. Cooper: Well, first, the decision wasn't made a month ago. If the decision had been made a month ago, then there would have been no reason that I'm aware of to delay disclosure of it. In so far as why the decision has now been made, and the determination has been made, that providing of the decision and of the course of action that the Justice Department has resolved to take should compliance not be forthcoming, that notice of these facts should be provided to the PLO Observer Mission. And that was what the purpose of that letter was for. There would be no way we could withhold either decision of notice of it for another month, in light of the fact that the statute itself becomes applicable on the 21st of March. The statute itself governs the timing of — of — of its application. So it, in a very real sense, governs also the timing of our conduct.

Q: Well, wasn't this session announced and then unannounced about a month ago?

Mr. Cooper: No, it's never been announced. There have been speculation that it would be announced. There's been a lot of anticipation that a decision had been made and would be announced. But on each of those occasions those were false starts.

Q: Could you repeat what date this would begin? Have you indicated that in any order or directive from an arbitration panel or the World Court elements? (Inaudible) — didn't participate in it —

Mr. Cooper: Right.

Q: Are there — (inaudible) —

Mr. Cooper: Yes. I think that would be an accurate — an accurate understanding of the effect of any result from an international tribunal that examined the international law effect of this decision, of this statute. I just have to keep coming back to the fact that a statute supersedes any pre-existing, contrary international law obligation. You know, to give you a better, or perhaps an easier way to understand this — if a pre-existing statute in the US Code was superseded, or will — let me put it this way, if a later-in-time statute is passed and it is irreconcilable with an earlier statute, it's quite black-letter law that the earlier statute gives way and the later statute supersedes it. A treaty is, like a statute, the law of the land, but it has no higher status in the law of the land than a previous statute. So an earlier treaty that is inconsistent with a subsequently enacted statute also must give way to that subsequently enacted statute, at least for domestic law purposes. And that is — and we are in the business here of enforcing domestic law — that is, laws passed by Congress. So our compass is set on that.

Q: Why is it necessary to go to — (inaudible) — to close the office, even though you have the statute now? I mean, why can't you just go in and close it?

Mr. Cooper: The statute itself charges the Attorney General with responsibility for enforcing the statute. It makes specific reference to the fact that the United States courts are available to him for that purpose, and that is the enforcement method that he has chosen.

Q: Why is that you — (inaudible) — this announcement in — (inaudible) — already gone? (Inaudible.)

Mr. Cooper: Our announcement is tied to providing some reasonable notice to the PLO observer mission. Next week, I think we're just about ten days from the time — precisely ten days from the effectiveness of the act — of the statute itself. And ten days notice seems like a perfectly legitimate amount of time to provide them.

Q: Last year, when you closed the PLO office in Washington, you gave it a week delay, I think more than once. Could that happen again now in reference to this UN —

Mr. Cooper: I'm not real acquainted with what, you know, what the litigation path of the PLO, the Washington Public Information Office was. All I can really tell you is that the Department and the Attorney General is resolved to seeking the necessary relief in federal court should the PLO observer mission still be open on March 21, 1988.

Q: ... that this is a very dangerous action in terms of the effect it might have on US relations with the United Nations and its future — and existing treaties, international treaties?

Mr. Cooper: The administration, through the State Department, made known its opposition to this measure when it was pending in Congress. I think that among the points they made were points that sounded very much along the lines that you have outlined. And they also cited international law concerns about the measure. In any event, Congress presumably considered those concerns at the time it was passed. At this point, those concerns cannot govern the Executive in his obligation to enforce and execute upon an otherwise constitutional law.

Q: But didn't — wouldn't the President have a recourse to say, you know, cite national security concerns and say we just can't comply with this law? Or override it somewhere?

Mr. Cooper: Well, whether that course was open to the President is really quite moot. The decision has been made that the statute is due to be enforced, and that we — it's encumbent upon the administration to enforce it. Yes, sir?

Q: Just to follow up on this point, doesn't it establish a precedent as part of US international obligations (upon treaties)? Suppose at a time in the future you get a situation like the Panama Canal for example, and the Congress enacts, and you do exactly the same, then you're giving a signal to Congress that they will be able to act on other treaties(?) too whenever they wish.

Mr. Cooper: I hope — this is not — this is not new, this reality that Congress may, as a matter of domestic law, that is in terms of the domestic law of the United States wholly apart from our international obligations, supersede treaties, pre-existing treaties, is well known to Congress, and they've been doing it for centuries — a century, over a century. So this will not come as any startling revelation to Congress, I don't think.

Q: Could you give an example of this, of this kind of action in the past?

Mr. Cooper: The truth is I can't. We've got cases in our analysis that we have prepared in our role in advising the Attorney General on the legal status of this statute, they do not immediately come to mind, but there are a number of cases on this, and I'd be happy to provide citations to you if you'd like.

Q: Well, isn't there a problem here? You keep saying "domestic forum", but these people have been treated as diplomats up until now, and even the letter is

addressed to the Observer Mission at the United Nations. They have had diplomatic privilege in the United States, extended through the State Department, and now you're calling them strictly domestic. Can you really switch your horses in midstream, there, and say that these people are purely a matter of domestic forum?

Mr. Cooper: Well, they have been accorded this diplomatic status by virtue of — not by virtue of the President's Constitutional authority to receive ambassadors and to recognize governments and to establish diplomatic relations, but by virtue of the UN and its status — the Headquarters Agreement, which was incorporated into the US Code as sovereign law, and that is a status that the Congress can change. They cannot change any diplomatic status that the President extends, but they can certainly change diplomatic status that is recognized by virtue of the Headquarters Agreement, or anything other than what the President recognizes. Yes?

Q: I'm curious as to why the Justice Department didn't fight this law in the courts on the grounds that it impinges on the President's authority to conduct foreign policy.

Mr. Cooper: Well, if it did do that, we would fight it, you may rest assured, and in my office, the Office of Legal Counsel, we devote a lot of time, and did devote a lot of time in this instance, to exactly that question, not just in connection with the statute as passed, but in connection with the statute as proposed when it was being debated. I doubt any of you remember when the President signed the bill that — in which this provision was contained, but he made note of the fact that it was not a provision he favored, but it — he did not believe, and I think he was correct then, that the statute infringed upon his exclusive foreign affairs powers. This is to say that the President has not exercised his exclusive foreign affairs powers vis-à-vis the PLO. They are not recognized; they never have been. I am aware of no intention on the part of the administration to recognize the PLO. If recognition of the PLO and exercise of presidential Constitutional prerogative in this area would indeed change the analysis.

Q: In other words, if Congress — for example, if Congress, in its wisdom, should pass a law closing the Soviet Mission to the United Nations, the Justice Department and the President would fight that, because there is diplomatic relations?

Mr. Cooper: That would plainly be unconstitutional. Yes, sir? Bert?

Q: Would an injunction be the normal means of (inaudible) forcement?

Mr. Cooper: ... I don't know what the normal means would be, because this statute is not a normal kind of statute. It is clearly among the means that are available to the President and to his instrument, the Attorney General, for enforcing this statute, I — rather than speculate on the other means available to us, I just will confirm yet again that we've chosen to go into court and to pursue a means that, on the face of the statute — (coughs) — excuse me — is clearly available. (Coughs.) I beg your pardon. Ruth?

Q: Secretary Shultz — (inaudible) — Congress in some way. Do you agree with that? Or —

Mr. Cooper: I am going to simply defer to Secretary Shultz on the policy wisdom of this statute. We're just lawyers over here. Yes, sir?

Q: Was this issue referred to the President? And did he, in effect, make the decision on this?

Mr. Cooper: It just wouldn't be appropriate to describe the nature of the deliberative process on this. But this is an administration decision, and it is one that the President is cognizant of and supports.

Q: On the smart-dumb scale, how would you rate this on the Justice Department's decisions that you've seen in your time here in Washington?

Mr. Cooper: Well, I think it's like the rest of them in that it's —

Q: (Off-mike) — low or —

Mr. Cooper: I think it's like all the rest of them in that it's the right decision. Yes, sir?

Q: So you say that the status of these missions without diplomatic representation was in sort of a gray zone in international law?

Mr. Cooper: I would think that would not be an unfair to characterize the observer missions to the PLO — I mean, to the United Nations. They have a gray kind of status, vis-à-vis the United Nations, let alone United — vis-à-vis any diplomatic ...

Q: So we'd say that — (inaudible) — contracting parties of the headquarters agreement, the UN and the US Government? The signatories of the headquarters agreement?

Mr. Cooper: At least those two, yes, and the headquarters agreement is incorporated into US law. It is a — you can find it in the US Code. So it —

Q: So both signatories would not have a legal leg to stand on to try to keep that mission open?

Mr. Cooper: Not for domestic law purposes. At least that is certainly our judgment on the matter, which we are prepared to advance and defend in court.

Q: Can you describe the rationale of why you chose the federal court rather than proceed (?) any other route to enforce the —

Mr. Cooper: No. I would not describe any of the deliberations that went into that decision. Just suffice it to say that is the enforcement method that is clearly authorized under the statute, and that it has been determined is the most appropriate means for proceeding at this time.

Q: I do want to make sure I understand the federal — (inaudible). You're not going to — if they comply, at least close up shop and go home, you're not going to federal court —

Mr. Cooper: Oh, gosh, no, of course not. You know, obviously the only reason to go to federal court would be to enforce a statute that was not being complied with. If they comply, that will be the end of it.

Q: (Off-mike)

Mr. Cooper: I beg your pardon? I'm sorry.

Q: Could you explain to us why you haven't — why you're so reluctant to say why the administration chose to go to court? I mean I just don't see what the issue —

Mr. Cooper: Well let me — why is that such a puzzling decision? As I say, the statute itself makes specific reference to the availability of the United States courts for enforcing the statute. It is an orderly and appropriate way to go. It provides all interested parties an opportunity to make known their views and legal arguments with respect to the validity of the measure. It seems to me to be entirely an appropriate method.

Mr. Eastland: Do we have any other questions?

Q: (Off-mike) — Well, this would be more a question for the Attorney General, — (off-mike) — is the Attorney General's decision, or is this — (off-mike)?

Mr. Eastland: Well, Chuck is prepared to answer that, but I'll answer it for him. The letter clearly is the Attorney General's letter. Chuck, as most of you, I assume know, is the individual in this building charged with basically doing the work in this area. He is the head of the Office of Legal Counsel. That office has existed since 1950. It used to be part of the Solicitor General's office since 1870. It is charged with giving legal advice and opinion, one of the core duties of the Attorney General since 1789. And so here we have Mr. Cooper, he is the authority in this area. Any other questions?

Q: Ask some more like that!
Mr. Eastland: Thank you.

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(117) Summons in a Civil Action, United States District Court, Southern District of New York (case No. 88 CIV. 1962), *United States of America* v. *Palestine Liberation Organization*, et al.

Mission of the Palestine Liberation Organization to the United Nations, 115 E. 65th Street, New York, New York 10021.

You are hereby summoned and required to file with the Clerk of this Court and serve upon Mona S. Butler, Attorney, Department of Justice, Civil Division, Room 3335, 10th & Pennsylvania Avenue, N.W., Washington, D.C. 20530, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

United States District Court for the Southern District of New York

United States of America, Plaintiff *v.* Palestine Liberation Organization; Mission of the Palestine Liberation Organization to the United Nations; Zuhdi Labib Terzi; Riyad H. Mansour; Nasser Al-Kidwa; Ali Mohammed Abdallah; Veronica Kanaan Pugh and Josephine Villaruel, Defendants.

COMPLAINT

The *United States of America*, by its undersigned attorneys, brings this civil action, and for its complaint against defendants alleges as follows:

1. This is an action for declaratory and injunctive relief to enjoin defendants from continuing violations of the Anti-Terrorism Act of 1987, Title X of the Foreign Relations Authorization Act of 1988-89, Pub. L. No. 100-204, §§ 1001-1005 ("the Anti-Terrorism Act").

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1345 and section 1004 of the Anti-Terrorism Act. Declaratory relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202. Injunctive relief is sought pursuant to the equity power of this Court, as well as section 1004 of the Anti-Terrorism Act, which grants this Court authority to grant injunctive and such other equitable relief necessary to enforce the provisions of the Anti-Terrorism Act.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 *(b)* and *(d)* and section 1004 of the Anti-Terrorism Act.

4. Plaintiff is the *United States of America.*

5. Defendant *Palestine Liberation Organization* ("PLO") is an unincorporated foreign entity that maintains an Observer Mission to the United Nations in New York, New York ("the Observer Mission"), within this judicial district.

6. Defendant *Mission of the Palestine Liberation Organization to the United Nations* is the Permanent Observer Mission of the PLO accredited to the United Nations, pursuant to United Nations General Assembly resolution No. 2337 (XXIX). Defendant Observer Mission is located in New York, New York, within this judicial district.

7. Defendant *Zuhdi Labib Terzi* holds a passport from Algeria. Defendant Terzi was admitted to the United States pursuant to a "B-1" visa issued to aliens visiting

the United States temporarily for business. Defendant Terzi maintains an office in New York, New York, within this judicial district. Defendant Terzi is the Permanent Observer of the PLO to the United Nations and is the highest ranking member of the PLO in the United States. He is sued individually and in his official capacity as the Permanent Observer of the PLO to the United Nations.

8. Defendant *Riyad H. Mansour* is a United States citizen. Defendant Mansour resides and is employed in New York, New York, within this judicial district. Defendant Mansour is the Deputy Permanent Observer of the PLO to the United Nations. He is sued individually and in his official capacity as the Deputy Permanent Observer of the PLO to the United Nations.

9. Defendant *Nasser Al-Kidwa* is a citizen of Iraq. Defendant Al-Kidwa was admitted to the United States pursuant to a "B-1" visa issued to aliens visiting the United States temporarily for business. Defendant Al-Kidwa is employed in New York, New York, within this judicial district. Defendant Al-Kidwa is the Alternate Permanent Observer of the PLO to the United Nations. He is sued individually and in his official capacity as the Alternate Permanent Observer of the PLO to the United Nations.

10. Defendant *Ali Mohammed Abdallah* is a United States citizen. Defendant Abdallah resides in New York, New York, within this judicial district. Defendant Abdallah is employed as a Researcher at the PLO Observer Mission in New York, New York.

11. Defendant *Veronica Kanaan Pugh* is a citizen of Great Britain and has been admitted to the United States as a permanent resident. Defendant Pugh resides in New York, New York, within this judicial district. Defendant Pugh is employed as an Administrative Assistant at the PLO Observer Mission in New York, New York.

12. Defendant *Josephine Villaruel* is a citizen of Canada. Defendant Villaruel is employed as a Clerk at the PLO Observer Mission in New York, New York.

13. Section 1003 of the Anti-Terrorism Act provides, in pertinent part, as follows:

> It shall be unlawful, if the purpose be to further the interests of the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof, on or after the effective date of this title —
>
> (1) to receive anything of value except informational material from the PLO or any of its constituent groups, any successor thereto, or any agents thereof;
>
> (2) to expend funds from the PLO or any of its constituent groups, any successor thereto, or any agents thereof; or
>
> (3) notwithstanding any provision of law to the contrary, to establish or maintain an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof.

14. The Attorney General of the United States is responsible for enforcing the policies and provisions of the Anti-Terrorism Act.

15. The President has not certified in writing, pursuant to section 1005 of the Anti-Terrorism Act, to the President *pro tempore* of the Senate and the Speaker of the House that the PLO, its agents, or constituent groups thereof no longer practice or support terrorist actions anywhere in the world.

COUNT I

16. Defendant Terzi, either himself or as an agent of the PLO, owns and maintains a townhouse located at 115 East 65th Street, New York, New York ("the Townhouse"), within the jurisdiction of the United States.

17. Defendant Terzi maintains the Townhouse as an office and/or headquarters of the PLO and/or the PLO Observer Mission to the United Nations.

18. The Townhouse is being maintained as an office and/or headquarters of the PLO and/or the PLO Observer Mission at the behest or direction of, and/or with funds provided by the PLO, its constituent groups, a successor to any of those, or agents thereof.

19. The purpose of maintaining the Townhouse as an office and/or headquarters of the PLO and/or the PLO Observer Mission is to further the interests of the PLO, its constituent groups, any successor to any of those, or agents of the PLO.

20. Upon information and belief, defendants will seek other premises and/or will seek the assistance of third parties to obtain other premises for use as an office and/or headquarters of the PLO and/or the PLO Observer Mission should the Court enjoin defendants from maintaining the Townhouse as an office of the PLO and/or the PLO Observer Mission.

21. The maintenance of the Townhouse as an office or headquarters of the PLO and/or the PLO's Observer Mission to the United Nations is a violation of section 1003 (3) of the Anti-Terrorism Act.

COUNT II

22. Upon information and belief, defendants have expended and continue to expend funds from the PLO, its constituent groups, any successor thereto, or agents of the PLO, for goods and services, including but not limited to the following:

A. To purchase supplies for the PLO Observer Mission;

B. To maintain telephone service for the PLO Observer Mission;

C. To maintain electricity and other utilities for the Townhouse that serves as the office and/or headquarters of the PLO and/or the PLO Observer Mission;

D. To maintain a policy of fire and casualty insurance on the Townhouse that serves as the office and/or headquarters of the PLO and or the PLO Observer Mission;

E. To pay salaries, living expenses, and/or travel and related business expenses to agents and/or employees of the PLO and/or the PLO Observer Mission.

23. Upon information and belief, the PLO Observer Mission, the PLO, its constituent groups, any successor thereto, or agents thereof, maintain account(s) in banks and/or other financial institutions within the United States from which funds are drawn for the expenditures set forth in paragraph 22.

24. The purpose of the expenditure of funds set forth in paragraph 22 is to further the interests of the PLO, its constituent groups, any successor to any of those, or agents of the PLO.

25. The expenditure of funds as set forth in paragraph 22, above, violates section 1003 (2) of the Anti-Terrorism Act.

COUNT III

26. Defendants Terzi, Mansour, Al-Kidwa, Abdallah, Pugh, and Villaruel have received and continue to receive items of value, other than informational material, from the PLO, its constituent groups, any successor thereto, or agents thereof, including but not limited to salaries, living expenses, and/or travel and related expenses, in their capacities as agents and/or employees of the PLO and/or the PLO Observer Mission.

27. The purpose of the receipt of the items of value referenced in paragraph 26, above, is to further the interests of the PLO, its constituent groups, any successor to any of those, or agents thereof.

28. The receipt of items of value by defendants Terzi, Mansour, Al-Kidwa, Abdallah, Pugh, and Villaruel as set forth in paragraphs 26 and 27, above, violates section 1003 (1) of the Anti-Terrorism Act.

Wherefore, Plaintiff respectfully prays as follows:

1. That the Court issue an order declaring that the maintenance of the Townhouse at 115 East 65th Street, New York, New York, or of any other offices or premises within the jurisdiction of the United States, as an office or headquarters of the PLO and/or the PLO Observer Mission to the United Nations, violates section 1003 (3) of the Anti-Terrorism Act;

2. That the Court enjoin defendants from using or otherwise maintaining the Townhouse at 115 East 65th Street, New York, New York, or any other offices or premises within the jurisdiction of the United States, as an office of the PLO and/or the PLO Observer Mission to the United Nations;

3. That the Court enjoin defendants from seeking other premises or soliciting and/or accepting assistance from third parties, in order to establish any office and/or headquarters for the PLO and/or PLO Observer Mission within the jurisdiction of the United States;

4. That the Court declare that the expenditure of funds from the PLO, any of its constituent groups, any successor thereto, or any agents thereof, to maintain telephone and utility services for any office and/or headquarters of the PLO or the PLO Observer Mission; to maintain policies of insurance for any office and/or headquarters of the PLO; to purchase supplies for the PLO and/or the PLO Observer Mission; or to pay salaries, living expenses, and/or travel and related expenses to agents and/or employees of the PLO and/or the PLO Observer Mission, is a violation of section 1003 (2) of the Anti-Terrorism Act;

5. That the Court enjoin defendants from expending any funds from the PLO, any of its constituent groups, any successor thereto, or any agents thereof, to maintain telephone and utility services for any office and/or headquarters of the PLO; to maintain policies of insurance for any office and/or headquarters of the PLO; to purchase supplies for the PLO Observer Mission; or to pay salaries, living expenses, and/or travel and related expenses to agents and/or employees of the PLO and/or the PLO Observer Mission;

6. That the Court declare that defendants' receipt of salaries, living expenses, and travel and related expenses from the PLO, its constituent groups, any successor thereto, or any agents thereof, is a violation of section 1003 (1) of the Anti-Terrorism Act;

7. That the Court enjoin defendants' receipt of salaries, living expenses, and travel and related expenses from the PLO, its constituent groups, any successor thereto, or any agents thereof;

8. That the Court order defendants to transfer out of the United States all funds held by the PLO Observer Mission, the PLO, its constituent groups, any successor

thereto, or any agents thereof, in banks or other financial institutions within the United States; and

9. That this Court order such other and further relief as is necessary and appropriate to achieve compliance with the provisions of the Anti-Terrorism Act.

Dated: New York, New York
March 22, 1988.

Respectfully submitted,

Rudolph W. GIULIANI,
United States Attorney.

John R. BOLTON,
Assistant Attorney General.

Peter C. SALERNO,
Assistant United States
Attorney.

David J. ANDERSON

One Saint Andrews Plaza,
New York, New York 10007.
Tel.: (212) 791-0054.

Vincent M. GARVEY

Mona S. BUTLER

Attorneys, Department of Justice,
Civil Division, Room 3335,
10th & Pennsylvania Avenue, N.W.,
Washington, D.C. 20530.
Telephone: (202) 633-3374.

Attorneys for Plaintiff.

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3. Documents of the Forty-third Session of the General Assembly and of the Security Council[1]

(118)	Letter dated 14 March 1988 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the Secretary-General. Annex: Letter from the Secretary of the People's Committee of the People's Bureau for Foreign Liaison	A/43/215 S/19616 (mimeographed)
(119)	Lettre datée du 14 mars 1988 adressée au Secrétaire général par le représentant permanent de l'Algérie auprès de l'Organisation des Nations Unies. Annexe: Déclaration faite le 12 mars 1988 par le porte-parole du ministère des affaires étrangères de la République algérienne démocratique et populaire	A/43/217 S/19623 (mimeographed)

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[1] Documents not reproduced. *[Note by the Registry.]*

EXPOSÉS ÉCRITS

WRITTEN STATEMENTS

WRITTEN STATEMENT OF THE SECRETARY-GENERAL OF THE UNITED NATIONS

I. INTRODUCTION

1. By its resolution 42/229 B adopted on 2 March 1988, the General Assembly decided to request an advisory opinion of the International Court of Justice on the following question:

> "In the light of facts reflected in the reports of the Secretary-General [1], is the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations [2], under an obligation to enter into arbitration in accordance with section 21 of the Agreement?"

2. The present statement will examine the facts and the legal issues to which this question gives rise. In view of the time constraints inherent in the request, and to which reference is made by the General Assembly in resolution 42/229 B, every effort has been made to present the information contained in this statement as succinctly as possible. The documents transmitted to the Court by the Secretary-General in accordance with Article 65 of its Statute provide, of course, a comprehensive background to this Statement [3].

3. The meaning and scope of the question requested by the General Assembly emerge from the statements made in its meetings leading to the formal adoption of the resolution on 2 March 1988 [4]. Section 21 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (the "Headquarters Agreement [5]") provides that:

> "*(a)* Any dispute between the United Nations and the United States concerning the interpretation or application of this agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General, one to be named by the Secretary of State of the United States, and the third to be chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of Justice.
>
> *(b)* The Secretary-General or the United States may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the

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[1] Docs. 1 and 2. All document numbers in this Statement refer to the Dossier submitted to the Court by the Secretary-General. See note 3 below.

[2] Doc. 89.

[3] Documents relating to the Question on which an Advisory Opinion is requested by General Assembly resolution 42/229 B of 2 March 1988, transmitted to the International Court of Justice by the Secretary-General of the United Nations in accordance with Article 65, paragraph 2, of the Statute of the Court.

[4] Docs. 11 to 15.

[5] Doc. 89.

receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court."

The Court, in the question put before it, is requested to give an advisory opinion on whether, in the light of certain facts, as reflected in two reports of the Secretary-General to the General Assembly[6], the United States as a party to the Headquarters Agreement is under an obligation to enter into arbitration with the United Nations, the other party to the Agreement, in accordance with section 21 thereof.

4. In formulating this question, the General Assembly has confined itself to a relatively narrow issue, namely, whether the parties to the Headquarters Agreement have undertaken an obligation with respect to the manner in which disputes arising from the interpretation or application of the Headquarters Agreement must be settled and whether, in the light of the particular facts referred to in the Secretary-General's reports to the General Assembly, the necessary conditions have been met to place on the United States an obligation to arbitrate. The procedural nature of this question, however, cannot disguise its fundamental importance for the United Nations Organization, its member States and international law, the development of which is one of the principal functions of the United Nations under the Charter. The primary purpose of the Headquarters Agreement, as stated in section 27, is to "enable the United Nations at its headquarters in the United States, *fully and efficiently* to discharge its responsibilities and fulfill its purposes" (emphasis added). The integrity and viability of this Agreement is of paramount importance not only as a legal framework for relations between the United Nations and the United States as host country, but also as an international treaty whose obligations must be carried out in good faith.

5. The question referred to the Court for its advisory opinion requires the consideration of a number of factual and legal issues which will be examined in greater detail in the following pages. Since no question exists in a vacuum, the present statement will, in the first place, summarize the pertinent facts which have given rise to the question. Having provided the factual framework, the Statement will then take up the legal issues that in the opinion of the Secretary-General fall to be considered in relation to the question. The statement will show that the Headquarters Agreement is a valid treaty in force between the United Nations and the United States, that section 21 is the applicable law for the settlement of disputes concerning the interpretation or application of the Agreement, that such a dispute exists and that the United Nations has made every effort to settle this dispute by means of negotiation or any other agreed mode of settlement, that such efforts have not been successful and that, consequently, the United Nations has the right to request and the United States has an obligation to enter into arbitration.

II. SUMMARY OF THE FACTS GIVING RISE TO THE REQUEST FOR THE ADVISORY OPINION

6. The central legal fact which has given rise to the request for the present advisory opinion is Title X — Anti-Terrorism Act of 1987 (the "Anti-Terrorism Act" or ATA)[7] of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, which was signed into law by the President of the United States on 22

[6] Docs. 1 and 2.
[7] Doc. 38.

December 1987, with Title X to take effect 90 days after the date of enactment [8], i.e., on 21 March 1988. Section 1003 of the Act provides:

> "It shall be unlawful, if the purpose be to further the interests of the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof, on or after the effective date of this title —
>
> (1) to receive anything of value except informational material from the PLO of any of its constituent groups, any successor thereto, or any agents thereof;
>
> (2) to expend funds from the PLO or any of its constituent groups, any successor thereto, or any agents thereof; or
>
> (3) notwithstanding any provision of law to the contrary, to establish or maintain an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof."

It is not in dispute that the intent of this legislation is to obtain the closure of the Palestine Liberation Organization (PLO) Permanent Observer Mission to the United Nations, which has functioned in New York since 1975, soon after the General Assembly, by resolution 3237 (XXIX) of 22 November 1974, granted observer status to the PLO and extended to it an invitation to participate in the sessions and the work of the General Assembly, and of all international conferences convened under the auspices of the General Assembly or of other organs of the United Nations [9]. This intent is confirmed by the fact that on 11 March 1988 the Secretary-General was informed by the Acting Permanent Representative of the United States that the Attorney General of the United States had determined that he was required by the Anti-Terrorism Act (ATA) to close the office of the PLO Observer Mission to the United Nations in New York, "irrespective of any obligations the United States may have under the [Headquarters Agreement]" [10].

7. Anticipating the adoption of the Anti-Terrorism Act by the United States Congress — a legislative process that took several months [11] — the Secretary-General wrote to the Permanent Representative of the United States to the United Nations on 13 October 1987 to express his concern, and that of a number of delegations to the United Nations, that the proposed legislation (which he noted was opposed by the Secretary of State) ran counter to United States obligations arising from the Headquarters Agreement and to underline the serious and detrimental consequences that such legislation would entail [12]. In his reply on 27 October 1987, the Permanent Representative of the United States assured the Secretary-General that the Administration of the United States remained opposed to the proposed legislation, that it intended to raise the matter with Congress and that it was hopeful that its efforts would produce a satisfactory resolution of the issue [13].

8. The first occasion on which the proposed legislation was raised in an intergovernmental body of the United Nations was during a meeting of the Committee

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[8] *Ibid.*, section 1005 of the Public Law.
[9] Doc. 66.
[10] Doc. 105. See para. 30 below.
[11] For the legislative history of the Act, see docs. 39 to 55.
[12] Doc. 29.
[13] Doc. 30.

on Relations with the Host Country, which took place on 14 October 1987. At that meeting, the Permanent Observer of the PLO drew the attention of the Committee to the proposed legislation and referred in this connection to a letter addressed to the Chairman of the Senate Foreign Relations Committee on 29 January 1987 by the Secretary of State, Mr. George Shultz, in which the latter stated, *inter alia*, that:

> "The PLO Observer Mission in New York was established as a consequence of General Assembly resolution 3237 (XXIX) of November 22, 1974, which invited the PLO to participate as an observer in the sessions and work at the General Assembly. The PLO Observer Mission represents the PLO in the UN; it is in no sense accredited to the US. The US has made clear that PLO Observer Mission personnel are present in the United States solely in their capacity as invitees of the United Nations within the meaning of the Headquarters Agreement [14]."

While the letter textually recognized that the United States was under an obligation to permit PLO Observer Mission personnel to enter and remain in the United States to carry out their official functions at United Nations Headquarters, the Observer of the PLO stated that his Organization would welcome any move that would prevent the entry into force of the legislation and sought a clarification of the situation.

9. Several members of the Host Country Committee expressed similar concerns and the Legal Counsel of the United Nations stated that the Organization shared the legal opinion expressed in the Secretary of State's letter. The core point of that letter was that the United States was under an obligation to permit PLO Observer Mission personnel to enter and remain in the United States to carry out their official functions at United Nations Headquarters. The representative of the United States sympathized with the concerns expressed by the members of the Committee but noted that it was premature to speculate on the outcome of the legislative process. He did, however, state that in the opinion of the Executive Branch of the United States Government, the closing of the PLO Mission would not be consistent with the host country's obligations under the Headquarters Agreement [15].

10. The General Assembly itself first became seized of the questions arising from the proposed legislation with the consideration of the Report of the Host Country Committee by the Sixth Committee of the General Assembly on 24 November 1987. The Sixth Committee subsequently devoted all or part of five meetings to a consideration of the Report of the Host Country Committee [16], including the question of the proposed legislation concerning the PLO Observer Mission. At its 62nd meeting at the 42nd session, on 11 December, the Sixth Committee adopted, by a recorded vote of 100 to 1 with no abstentions (the United States not participating), a draft resolution in which it: reiterated that the Permanent Observer Mission of the PLO to the United Nations in New York is covered by the Headquarters Agreement and should be enabled to establish and maintain premises and adequate functional facilities, and that the personnel of the Mission should be enabled to enter and remain in the United States to carry out their official functions; requested the host country to abide by its treaty obligations under the United Nations Headquarters Agreement and to refrain from taking any action that would prevent the discharge of the official functions

[14] Doc. No. 17, para. 46.
[15] Doc. 17, paras. 46-54.
[16] Docs. 18 to 22.

of the Permanent Observer Mission of the PLO to the United Nations; and requested the Secretary-General to take effective measures to ensure full respect for the Headquarters Agreement and to report, without delay, to the General Assembly on any further developments in the matter[17].

11. At the 98th plenary meeting of its 42nd session, on 17 December 1987, the General Assembly adopted the draft resolution submitted by the Sixth Committee, without change, by a recorded vote of 145 votes to 1[18]. Resolution 42/210 B was the first decision taken by a deliberative organ of the United Nations on the question of the proposed legislation which, although at a very advanced stage of the United States legislative process (having just been adopted by both houses of Congress[19]), had not yet been submitted to the President for signature. In view of this, and particularly in the light of the statements of representatives of the host country in the Host Country Committee and the General Assembly to the effect that the proposed legislation would not be consistent with the Headquarters Agreement, the General Assembly confined itself to reiterating its position of principle (operative para. 1), addressing a request to the host country to abide by its treaty obligations under the Headquarters Agreement (operative para. 2) and requesting the Secretary-General to take effective measures to ensure full respect for the Headquarters Agreement (operative para. 3)[20]. The Assembly also decided to keep the matter under active review (operative para. 4).

12. Concurrently with the deliberations in the General Assembly, the Secretary-General on 7 December 1987 once again wrote to the Permanent Representative of the United States. After noting that the proposed legislation in the United States Congress was far advanced and would, if adopted, signed into law and enforced, entail the closure of the PLO Observer Mission, the Secretary-General reiterated the legal position of the United Nations to the effect that

> "the members of the PLO Observer Mission are, by virtue of General Assembly resolution 3237 (XXIX), invitees to the United Nations and that the United States is under an obligation to permit PLO personnel to enter and remain in the United States to carry out their official functions at the United Nations under the Headquarters Agreement[21]".

In the view of the United Nations the United States was under a legal obligation to maintain the existing arrangements for the PLO Observer Mission, which had been in effect for the past 13 years. The main purpose of this letter, however, was twofold. Firstly, to urge the United States Government, even at this late stage, to act to prevent the adoption of the legislation by Congress, in line with the Government's own legal position, which was similar to that of the United Nations. Secondly, in the event that the proposed legislation became law, to request that the United States provide an assurance that the arrangements for the PLO Observer Mission would not be curtailed or otherwise affected. Without such assurance, the Secretary-General noted that

> "a dispute between the United Nations and the United States concerning the interpretation or application of the Headquarters Agreement would exist and I would be obliged to enter into the dispute settlement procedure foreseen under section 21 of the United Nations Headquarters Agreement of 1947[22]".

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[17] Doc. 25.
[18] Doc. 27. The United States did not participate in the vote.
[19] Docs. 52 and 53.
[20] Doc. 28.
[21] Doc. 31.
[22] *Ibid.*

13. The Secretary-General's letter of 7 December is of particular importance because for the first time a formal reference is made to the international legal consequences of the adoption of the proposed legislation. It is relevant to note in this connection that in the view of the Secretary-General even if the proposed legislation were to be adopted by Congress and signed into law by the President, a dispute would only exist if the United States Government would fail to provide an assurance that the existing arrangements for the PLO Observer Mission would not be curtailed or otherwise affected. Such an assurance would preclude a determination by the Secretary-General of the existence of a dispute arising from the Headquarters Agreement. However, it follows clearly from the Secretary-General's letter of 7 December that in the absence of any such assurance, the adoption and signing into law of the proposed legislation would create the conditions for the existence of a dispute within the meaning of section 21 of the Headquarters Agreement and that the dispute settlement procedure foreseen therein would then become applicable.

14. Following the adoption of General Assembly resolution 42/210 B of 17 December 1987, the Secretary-General on 21 December requested the Permanent Representative of the United States to inform him of any further developments regarding the pending legislation which would affect the PLO Mission to the United Nations, in particular the signing into law of the legislation, so that he might discharge the responsibilities placed upon him by operative paragraph 3 of the resolution, to take effective measures to ensure full respect for the Headquarters Agreement and to report, without delay, to the General Assembly on any further developments in this matter [23].

15. The President of the United States signed the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, of which the Anti-Terrorism Act of 1987 forms a part, on 22 December 1987 [24]. The legislation became law on that date, although the effective date of implementation of the Anti-Terrorism Act was, by the terms of that Act, 90 days later, i.e., 21 March 1988. In the view of the Secretary-General, in the absence of any assurance as to the maintenance of the existing arrangements for the PLO Observer Mission, the incompatibility of this Act with the obligations of the host country under the Headquarters Agreement created a dispute within the meaning of section 21 of the Agreement.

16. It was not, however, until 5 January 1988 that the Secretary-General was formally notified of the signing into law of the Act. In a letter of that date, the Acting Permanent Representative of the United States confirmed that the legislation to which the Secretary-General had referred in his letters of 7 and 21 December 1987 had been signed into law on 22 December. The letter then went on to say

> 'Because the provisions concerning the PLO Observer Mission may infringe on the President's constitutional authority and, if implemented, would be contrary to our international legal obligations under the United Nations Headquarters Agreement, the Administration intends, during the 90-day period before this provision is to take effect, to engage in consultations with the Congress in an effort to resolve this matter [25]."

17. The parties to the Headquarters Agreement had foreseen that from time to time disputes might arise concerning its interpretation or application and had, therefore, made provision for the settlement of such disputes through negotiation

[23] Doc. 32.
[24] Doc. 55.
[25] Doc. 33.

or other agreed mode of settlement, failing which disputes would be referred for final decision to a tribunal of three arbitrators[26]. The procedure envisaged in paragraph *(a)* of section 21 of the Headquarters Agreement therefore consists of a two-stage process. In the first stage the parties attempt to settle their difference through negotiation or some other agreed mode of settlement on which they might agree. If they are unable to reach a settlement through these means, the second stage of the process, compulsory arbitration, becomes applicable.

18. Though an arbitral tribunal established pursuant to paragraph *(a)* of section 21 might be given, by the parties, the power to make binding interim decisions, this is not explicitly provided for in that paragraph. Indeed, the only provision for such decision appears in paragraph *(b)* of section 21, which allows the General Assembly, at the initiative of either of the parties, to request an advisory opinion of the Court on any legal question arising in the course of such proceedings, and specifies that pending the receipt of such an opinion, the arbitral tribunal may issue an interim decision that must be observed by both parties.

19. The particularity of the dispute engendered by the adoption and signing into law of the Anti-Terrorism Act was that because the legislation in question was to become effective 90 days after signature on 22 December 1987, the effective utilization of the dispute settlement procedure foreseen in section 21 of the Headquarters Agreement was correspondingly subject to the time constraints imposed by the Act. Unless the United States agreed to an extension of the 90-day limit or agreed to some special procedure whereby an extension might be ordered as part of an agreed mode of settlement, either a negotiated or other agreed settlement or a final arbitral award would have to be achieved no later than 21 March 1988; otherwise an interim order would have to be secured from a tribunal, which required that before that date the tribunal be set up and functioning and an advisory opinion have been requested of the Court. With this time factor in mind, the Secretary-General immediately sought clarification of the letter addressed to him on 5 January 1988[27].

20. Beginning on 7 January, consultations were held between the two sides and on 12 January the Legal Counsel of the United Nations met with the Legal Adviser of the United States State Department. However, that meeting did not provide the necessary assurance sought by the Secretary-General that the existing arrangements for the PLO Observer Mission would be maintained, and therefore on 14 January the Secretary-General in a letter to the Permanent Representative of the United States formally invoked the dispute settlement procedure set out in section 21 of the Headquarters Agreement[28]. The letter proposed that the first round of the negotiating phase be convened on 20 January at the United Nations Secretariat Building and named Mr. Carl-August Fleischhauer, the Under-Secretary-General for Legal Affairs and Legal Counsel, as the negotiator for the United Nations. The United States did not formally respond to the Secretary-General's letter or to his proposal that the first round of the negotiating phase foreseen by section 21 of the Headquarters Agreement take place on 20 January. At the request of the United States side the date of the proposed meeting was postponed until 27 January. The reason for the reluctance of the United States to respond officially to the Secretary-General's letter became clear in the course of that meeting.

21. On 27 January the United Nations Legal Counsel and members of his staff

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[26] Section 21 *(a)* of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations. Doc. 89.

[27] Doc. 33. *Supra*, para. 16.

[28] Doc. 34.

met with the Legal Adviser of the United States State Department, Mr. Abraham D. Sofaer, who was accompanied by the Assistant Attorney General for the Office of the Legal Counsel of the Department of Justice, Mr. Charles Cooper, a Deputy State Department Legal Adviser and the Legal Adviser of the United States Mission to the United Nations.

22. As far as the substance of the dispute was concerned, the United Nations raised the question of the possible non-implementation of the legislation either by repeal or by obtaining a ruling of the Attorney General based on the conflict of domestic law with international law or on the doctrine of the separation of powers in the conduct of foreign affairs. These latter suggestions in fact derived from the statements made by the Secretary of State and various United States representatives in the General Assembly and the Host Country Committee [29] and by the President of the United States on signing into law the Act [30]. For the United Nations, the negotiating phase of the procedure contained in section 21 of the Headquarters Agreement was the proper forum for a consideration of such suggestions, which could provide a basis for a negotiated settlement of the dispute and thus obviate the need to resort to arbitration.

23. The response of the United States side, however, to these suggestions was confined to setting out the position of the Attorney General in this matter, as the officer responsible for the implementation of the legislation in question [31]. The Assistant Attorney General stated that the Department of Justice was examining whether the Attorney General had any discretion with regard to the enforcement of the legislation. If the Attorney General concluded that he had no discretion as to its enforcement and application, he would be governed by and would be obliged to implement it. The Attorney General would have the last word in determining whether, in this matter, international or domestic law prevailed [32].

24. The United Nations Legal Counsel responded that the United Nations would assert and defend its rights as it perceived them under international law and by the means agreed upon in a binding international treaty which it had concluded with the United States. He referred in this respect to the Headquarters Agreement and the Secretary-General's letter of 14 January 1988 formally invoking the dispute settlement procedure contained in section 21.

25. The State Department Legal Adviser, however, stated that the United States had not acknowledged that a dispute within the meaning of section 21 of the Headquarters Agreement existed because the legislation in question had not yet been implemented and the Executive Branch was still evaluating the situation with a view to the possible non-application and non-enforcement of the law.

26. The meeting confirmed that not only was minimal progress being made with regard to the substance of the dispute but that serious differences existed between the two sides with regard to the procedural framework within which the matter should be settled. At the insistence of the United Nations Legal Counsel, however, the State Department Legal Adviser agreed that preliminary discussions of an informal nature on a contingency basis could commence between the two sides regarding technical points relating to a possible arbitration. Such technical discussions were held on 28 January, at which the United Nations made known its views regarding such matters as the costs of the arbitration, its location, rules of procedure and the form of the *compromis*.

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[29] See paras. 9 and 11 above.

[30] Doc. 55.

[31] Section 1004 of the Public Law cited *supra*, note 7. Doc. 38.

[32] The positions were later set forth by the Assistant Attorney General at a press conference on 11 March. Doc. 116.

27. Although contacts between the United Nations and the United States continued, particularly regarding the decision of the United States on whether it would implement the legislation, it became increasingly clear to the Secretary-General that an impasse had been reached. In the light of this unsatisfactory situation the Secretary-General again wrote to the Permanent Representative of the United States, on 2 February [33]. The Secretary-General noted that while he had not received an official response to his letter of 14 January (para. 20 above), consultations between the United Nations and the United States were nevertheless being conducted on various levels. In these consultations the United States side asserted that it was still in the process of evaluating its position and that it did not believe that a dispute within the framework of section 21 of the Headquarters Agreement existed at that time. The Secretary-General's letter then went on to say that

> "The section 21 procedure is the only legal remedy available to the United Nations in this matter and since the United States so far has not been in a position to give appropriate assurances regarding the deferral of the application of the law to the PLO Observer Mission, the time is rapidly approaching when I will have no alternative but to proceed either together with the United States within the framework of section 21 of the Headquarters Agreement or by informing the General Assembly of the impasse that has been reached [34]."

On 4 February the Secretary-General spoke in the same sense to the Permanent Representative of the United States.

28. The United States side continued to postpone a decision regarding the implementation of the legislation and when the Secretary-General learned on 10 February that a decision had once more been postponed he submitted a report to the General Assembly [35]. In the view of the Secretary-General, the only conclusion to be drawn from the multiple consultations, contacts, meetings and correspondence that had taken place between 5 January (when the United States had confirmed the signing into law of the legislation) and 10 February, and from the refusal of the host country to enter into negotiations was that the dispute did not lend itself to a negotiated settlement nor had the parties agreed on another mode of settlement. In the light of the time constraints imposed by the legislation (see para. 19 above), the Secretary-General concluded that a stage in the negotiations had been reached where he was obliged to inform the General Assembly of the impasse reached. On 11 February the Legal Counsel of the United Nations informed the State Department Legal Adviser of the United Nations choice of arbitrator in accordance with section 21 of the Headquarters Agreement and urged the United States to inform the United Nations of its choice as soon as possible [36].

29. In a second report to the General Assembly on 25 February [37], the Secretary-General informed the General Assembly that no further communications had been received from the United States either on the substance of the matter or on the procedure. It was in these circumstances that the reconvened General Assembly on 2 March 1988 adopted resolution 42/229A as well as resolution 42/229 B which contained its request for the present advisory opinion

[33] Doc. 35.
[34] *Ibid.*
[35] Doc. 1.
[36] Doc. 36.
[37] Doc. 2.

on the obligation of the United States to enter into arbitration in accordance with section 21 of the Headquarters Agreement [38].

30. It may be of interest for the Court to know that following the adoption of resolution 42/229A on 2 March 1988, the Secretary-General, on 4 March, communicated the text of that resolution to the United States, *inter alia*, expressing the hope that it would still prove possible for the United States to reconcile its domestic legislation with its international obligations, failing which it would agree to utilize the procedure contained in section 21 of the Headquarters Agreement [39]. On 11 March, the Acting Permanent Representative of the United States informed the Secretary-General that the Attorney General of the United States had determined that he was required to close the PLO Observer Mission irrespective of the United States obligations under the Headquarters Agreement and that under the circumstances submission to arbitration would serve no useful purpose [40]. Whereupon the Secretary-General submitted his third report to the General Assembly [41]. A further report of the Secretary-General to the General Assembly was issued on 16 March [42] containing the text of the Secretary-General's reply to the United States letter of 11 March [43]. The General Assembly reconvened to consider the question on 18 March and on 23 March 1988 adopted, by a vote of 148 to two with no abstentions, resolution 42/230 [44]. During the session of the Assembly, on 22 March, the United States Attorney filed a summons against the PLO in an action for declaratory and injunctive relief to enjoin defendants from continuing violations of the ATA [45].

III. LEGAL ISSUES ARISING IN RELATION TO THE REQUEST FOR THE ADVISORY OPINION

31. The first legal issue that arises in relation to the question placed before the Court is whether the Headquarters Agreement is a valid treaty in force between the United Nations and the United States of America with all the legal consequences which this entails. The Headquarters Agreement was signed by the Secretary-General of the United Nations and the Secretary of State of the United States on 26 June 1947 and approved by the General Assembly by resolution 169 (II) of 31 October 1947 [46].

32. Section 28 of the Agreement provided that it be brought into effect by an exchange of notes between the Secretary-General and the appropriate executive officer of the United States, which exchange was effected on 21 November 1947, after the United States Congress had approved the Agreement by Public Law No. 80-357 [47]. The Headquarters Agreement was duly registered with the Secretariat of the United Nations and published by it in accordance with Article 102, paragraph 1, of the Charter [48]. Thus, from the point of view of international law, unless it has been denounced by either party, has ceased to be in force by operation of law or has otherwise been invalidated, the Headquarters Agreement

[38] Doc. 16.
[39] Doc. 105.
[40] *Ibid.*, Annex I.
[41] Doc. 105.
[42] Doc. 106.
[43] *Ibid.*, Annex I.
[44] Doc. 115.
[45] Doc. 117.
[46] For the legislative history of the Agreement, see docs. 78 to 88. For the text of resolution 169 (II), see doc. 89.
[47] Doc. 96. The history of that legislation appears in docs. 90-95.
[48] UN *Treaty Series*, Vol. 11, p. 11.

came into force on 21 November 1947 and remains a treaty in force as between the United Nations and the United States.

33. The Headquarters Agreement has not been denounced by either party nor has it ceased to be in force by operation of section 24 of the Agreement, since the seat of the United Nations remains within the territory of the United States. No other claim of invalidity has been made. In particular, no such claim has been asserted on the basis of the Anti-Terrorism Act of 1987 (ATA). Firstly, a careful scrutiny of the ATA demonstrates that it does not purport to invalidate or to override the Headquarters Agreement. However, even if the ATA purported to do so, this would not be possible under international law. Although international treaties can be abrogated or terminated by supersession, such action can only be brought about effectively in international law by an international instrument and not by domestic legislation. Article 27 of the Vienna Convention on the Law of Treaties of 1969 (and paragraph 1 of the same-numbered provision of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986) provides, *inter alia*, that: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty[49]". While the United States has not yet ratified the 1969 Vienna Convention on the Law of Treaties and the 1986 Convention has not yet entered into force, the Conventions and the quoted provision express generally accepted principles of customary international law generally recognized as the authoritative guide to current treaty law and practice. The United States is on record as sharing this position[50].

34. Since the Headquarters Agreement thus is a treaty in force, the question arises whether international law places an obligation upon the parties to comply with its terms in general and section 21 in particular. States as well as other international entities are bound by treaties they have properly concluded and that have entered into force, and these treaties must be performed by them in good faith. This principle, which is affirmed in the third preambular paragraph of the Charter of the United Nations and is commonly expressed by the maxim *pacta sunt servanda*, is incorporated in and codified by Article 26 of both the 1969 and the 1986 Vienna Conventions on the Law of Treaties. These Articles provide: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith"[51]. Furthermore, since the Headquarters Agreement was concluded pursuant to Article 105, paragraph 3, of the Charter in order to implement the enjoyment by the United Nations in the territory of each of its members of such privileges and immunities as are necessary for the fulfilment of its purposes (Art. 105, para. 1), the special duty of member States to "fulfil in good faith the obligations assumed by them in accordance with the present Charter" expressed in Article 2, paragraph 2, is directly applicable to the Headquarters Agreement.

35. Having regard to the nature and content of section 21, reference may also be made to Article 33, paragraph 1, of the Charter and to Part I, paragraph 11, of the Manila Declaration on the Peaceful Settlement of International Disputes[52],

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[49] United Nations Conference on the Law of Treaties — First and Second Session — *Official Documents* (United Nations Publication, Sales No. E.70.V.5). See also UN doc. A/Conf.39/11/Add.2.

[50] Restatement of the Foreign Relations Law of the United States (Revised), section 321, Comment *(a)*, as approved by the American Law Institute. To be published in April 1988.

[51] United Nations Conference on the Law of Treaties — First and Second Sessions — *Official Documents* (United Nations publication, Sales No. E.70.V.5). See also UN doc. A/Conf.39/11/Add.2, and UN doc. A/Conf.129/15.

[52] General Assembly resolution 37/10 of 15 November 1982.

which underline the importance of the good faith implementation of agreed dispute settlement procedures. Although these obligations are stated to apply primarily to inter-State relations, the wording of these instruments does not so limit them and the principles underlying them may be regarded as having equal relevance and significance to relations between States and international organizations.

36. In relation to the question before the Court it is, however, not sufficient to establish that the Headquarters Agreement is a treaty in force and that international law places an obligation on the parties to comply with its terms, including, in particular, section 21. It is also necessary to address the question whether the United States is under an obligation to enter into arbitration in accordance with section 21 of the Agreement. In order for the United States to be placed under an obligation to do so, it must be shown that a dispute exists, that it arises from the interpretation or application of the Headquarters Agreement and that good faith attempts by the United Nations to resolve the dispute by negotiation or other agreed mode of settlement have failed to do so. Each of these issues will be addressed in the following paragraphs.

37. As may be seen from the summary of the facts, in the view of the United Nations a dispute within the meaning of section 21 of the Headquarters Agreement existed from the moment the legislation in question was signed into law by the President of the United States on 22 December 1987, unless the Organization received adequate assurances as to non-implementation[53]. The United States, on the other hand, apparently contended that no dispute existed unless and until the legislation was implemented[54].

38. The existence of a dispute is an objective question. As this Court observed in its Advisory Opinion on the *Interpretation of Peace Treaties* of 30 March 1950,

> "Whether there exists an international dispute is a matter for objective determination. The mere denial of the existence of a dispute does not prove its non-existence. . . . [In] a situation in which the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations . . . the Court must conclude that international disputes have arisen[55]."

The denial of the existence of a dispute in such cases would frustrate the commitment to arbitrate. As the United States argued in the *Peace Treaties* Opinion: "Such a result could only operate to further the purposes of a State not prepared to live according to the law and carry out its responsibilities as a member of the community of nations[56]."

39. In the present case, can it be said that as a matter of objective determination a dispute concerning the interpretation or application of the Headquarters Agreement had arisen with the adoption and signing into law of the ATA of 1987? There can be no doubt that the intent of this legislation is to bring about the closure of the Observer Mission of the PLO and to prevent the representatives of the PLO from carrying out their official functions to the United Nations, although the organization has been invited to participate as an observer by the principal deliberative organ of the United Nations, as well as by other principal organs[57]. The legislation makes it unlawful to receive anything of value from the PLO, to

[53] Doc. 31.
[54] See para. 16, *supra*.
[55] *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Advisory Opinion of 30 March 1950, *I.C.J. Reports 1950*, p. 65 at p. 74.
[56] *Ibid.*, Second Phase, *I.C.J. Pleadings*, p. 213 at pp. 238-239.
[57] Docs. 63-72.

expend any funds from the PLO and to establish or maintain an office, headquarters, premises or other facilities or establishments of the PLO within the jurisdiction of the United States[58], and this purpose was repeatedly and clearly stated in the Congress when it considered the adoption of the ATA[59]. The automaticity of the process of bringing the ATA into force which was initiated with the signing of the ATA into law, objectively constitutes an immediate threat to bring about the closure of the facility from which PLO representation to the United Nations is accomplished, and this immediate threat is itself (particularly when considered in the context of the time factor described in para. 12 above) sufficient to create a dispute in the absence of an assurance from the Executive Branch that the legislation will not be enforced or that the existing arrangements for the PLO Observer Mission in New York will not be affected or otherwise curtailed. Indeed, instead of giving such assurance, the Acting United States Permanent Representative informed the Secretary-General on 11 March that the Attorney General would close the office of the PLO Observer Mission to the United Nations in New York "irrespective of any obligations the United States may have under the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations", and that "Under the circumstances, the United States believes that submission of this matter to arbitration would not serve a useful purpose"[60]. Indeed, as noted in paragraph 30 above, on 22 March the Attorney General of the United States filed a summons to close the PLO office[61].

40. If a subjective element in establishing the existence of a dispute is required, it is sufficient to note that the United Nations Secretary-General formally declared the existence of a dispute and invoked section 21 of the Headquarters Agreement in his letter of 14 January 1988 to the Permanent Representative of the United States[62] and that the General Assembly expressly endorsed this position in operative paragraph 4 of resolution 42/229A of 2 March 1988[63]. The continued denial of the existence of a dispute in these circumstances by the United States constitutes a violation of its good faith obligations arising from Article 2, paragraph 2, of the Charter of the United Nations, Articles 26 of both Vienna Conventions on the Law of Treaties and Part I, paragraph 11, of the Manila Declaration referred to above[64].

41. For the reasons set out in the preceding paragraphs, the United Nations believes that a dispute has existed between the United Nations and the United States from the moment of the signing into law of the ATA. Nor can there be any doubt that this dispute concerns the interpretation or application of the Headquarters Agreement. The Secretary of State of the United States and various representatives of the United States in the Host Country Committee and the General Assembly have clearly and consistently recognized that the PLO Observer Mission personnel are present in the United States in their capacity as invitees of the United Nations within the meaning of the Headquarters Agreement[65], and the Secretary-General has repeatedly taken the position that the ATA is inconsistent with the Headquarters Agreement[66]. Thus, the formal conditions for

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[58] Doc. 38.
[59] Docs. 39-55.
[60] Doc. 105, Annex I.
[61] Doc. 117.
[62] Doc. 34.
[63] Doc. 16.
[64] *Supra*, paras. 34 and 35.
[65] *Congressional Record*. See note 13, *supra*. See also doc. 17 and doc. 22.
[66] Docs. 29, 31, 32, 34, 35 and 37.

invoking section 21 of the Headquarters Agreement are clearly established and the procedural obligations of the parties, therefore, have become effective.

42. As has already been pointed out in paragraph 17, *supra*, the dispute settlement procedure envisaged in section 21 consists of two stages: negotiation or other agreed mode of settlement, and arbitration. In order to find that the United States is under an obligation to enter into arbitration, it is necessary to show that the United Nations has made a good faith attempt to resolve the dispute through negotiation or some other agreed mode of settlement and that such negotiations have not resolved the dispute.

43. The summary of facts contained in paragraphs 19 to 29 above shows conclusively that after first seeking clarification of the United States intentions through contacts and consultations held between 5 and 14 January 1988, the Secretary-General on 14 January formally invoked the dispute settlement procedure in section 21 of the Headquarters Agreement and proposed that the two sides enter into negotiations. Such contacts and consultations continued until 10 February, on which date the Secretary-General felt that, given the time-constraints imposed by the legislation in question and the evident lack of progress in reaching a negotiated settlement, he was obliged to inform the General Assembly.

44. The United States did not consider these contacts and consultations to be formally within the framework of section 21 *(a)* of the Headquarters Agreement. However, the United Nations considers that it is only required to show that it attempted in good faith to enter into negotiations as foreseen by section 21 *(a)*. Whether or not these efforts are characterized by the United States as falling within section 21 *(a)*, this can not alter the fact that the negotiations actually took place. In the light of the facts as described in paragraphs 19 to 29 above, the United Nations was under no further obligation to negotiate before engaging in the second, arbitration phase, of the agreed dispute settlement procedure, no other mode of settlement having been agreed upon[67]. The inability of the parties to resolve the dispute by negotiation or other agreed mode of settlement created a clear obligation on the parties to arbitrate, all the more so since, as the Secretary-General has pointed out, the section 21 procedure is the only legal remedy available to the United Nations in this matter[68].

IV. CONCLUSION

45. For the purpose of examining whether, in the light of the facts reflected in the reports of the Secretary-General to the General Assembly, the United States as a party to the Headquarters Agreement is under an obligation to enter into arbitration in accordance with section 21 of the Agreement, this Statement has sought to briefly identify and elucidate upon the legal issues to which the question gives rise.

46. It has accordingly been shown that the Headquarters Agreement, under which an obligation to arbitrate arises, is a valid treaty in force between the United Nations and the United States. The treaty has not been denounced nor has it ceased to be in force by operation of law. The ATA as domestic law does not purport to nor could it, under international law, invalidate or override the Headquarters Agreement.

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[67] Cf. case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, Judgment of 26 November 1984, *I.C.J. Reports 1984*, pp. 427-428.

[68] Doc. 35.

47. It has also been shown that section 21 is the applicable law for the settlement of disputes concerning the interpretation or application of the Headquarters Agreement, that such a dispute in fact exists and that the United Nations has attempted in good faith to reach a settlement of the dispute by means of negotiation or to agree on some other mode of settlement.

48. Since all prior formal and procedural conditions under the Headquarters Agreement have been met, in the view of the United Nations the United States is under an obligation to enter promptly into the arbitration proceedings provided for by section 21 of the Agreement.

49. In reaching these conclusions, the United Nations is obliged to reiterate the fundamental importance which it attaches to the respect for the good faith implementation of international obligations in general and to the Headquarters Agreement in particular. The question at issue goes far beyond the particular dispute and has far-reaching consequences for the orderly and efficient discharge of the responsibilities of the United Nations in the world at large.

WRITTEN STATEMENT OF THE SYRIAN ARAB REPUBLIC

"In the light of facts reflected in the reports of the Secretary-General,

(1) Is the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, under an obligation to enter into arbitration in accordance with section 21 of the Agreement?"

Due to the time constraint requested by the General Assembly of the United Nations in its resolution A/RES/42/229B of 2 March 1988, and,

Due to the time-limit of Friday 25 March 1988 fixed by Order of the International Court of Justice rendered on 9 March 1988, asking States so desiring to submit written statements relating to the question, and,

As no document has been received by the Syrian Arab Republic likely to throw light upon the question, and,

Due to the necessity of submitting a statement exposing the views of the Syrian Arab Republic in a question relating to the essence of the functions of the United Nations Organization, and,

Taking into account the freedom of the Organization in discharging its duties according to its Charter and in fulfilling the noble aims to which it has devoted the last forty years of its existence, and,

As the time afforded the Syrian Arab Republic for the presentation of its Statement is very short,

This statement shall be concise and limited to the question asked by the General Assembly in its Advisory Opinion of 2 March 1988, and to the legal points related thereto.

In its 104th plenary session, on 2 March 1988, the General Assembly of the United Nations adopted the following resolution No. A/RES/42/229 in which it said:

"Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, in pursuance of Article 65 of the Statute of the Court, for an advisory opinion on the following question, taking into account the time constraint:

'In the light of facts reflected in the reports of the Secretary-General, is the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, under an obligation to enter into arbitration in accordance with section 21 of the Agreement'."

On 9 March 1988, the International Court of Justice held a sitting to consider this request and delivered an Order that the Registrar of the Court communicated to the States Members of the United Nations. This Order states that the United Nations and the United States of America are entitled to furnish information on the question, in accordance with Article 66, paragraph 2, of the Statute, as to the applicability of arbitration obligations in pursuance of section 21 of the Agree-

ment signed on 26 June 1947 between the United Nations and the United States of America. (This Agreement was, later on, called the Headquarters Agreement.) Member States can, if they so desire, submit written statements to the Court on 25 March at the latest.

The Court has also decided to hear, at a public sitting to be held on 11 April, for this purpose, oral statements and comments on written statements already submitted to the Court by the United Nations and the United States of America.

The General Assembly of the United Nations addressed its request to the Court for an advisory opinion in pursuance of Article 96 of the Charter of the United Nations which reads in its first paragraph:

"*Article 96*

(1) The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question."

Chapter V of the Statute of the International Court of Justice on the basis of which the General Assembly of the United Nations has requested the advisory opinion states in its Article 65:

"*Article 65*

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."

In its request for an advisory opinion, the General Assembly of the United Nations referred to the following pertinent disposition in section 21 of the Headquarters Agreement signed on 26 June 1947.

"*Section 21*

(A) Any dispute between the United Nations and the United States concerning the incorporation or application of this agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General, one to be named by the Secretary of State of the United States, and the third to be chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of Justice.

(B) The Secretary-General or the United States may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed on both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court."

A dispute has arisen between the United Nations and the United States of America concerning the application of this Agreement when the American Congress voted the "Foreign Relations Authorization Act, Fiscal Years 1988-1989" Title X which was known under the name of: "Anti-Terrorism Act 1987".

This law has enumerated several acts which it has attributed to the Palestine

Liberation Organization (PLO) during which American citizens have been killed. It has also mentioned under point (5) that: "The PLO covenant specifically states that (armed struggle is the only way to liberate Palestine, thus it is an overall strategy, not merely a tactical phase)."

The law mentioned under paragraph (B)

"*(B) Determinations*

Therefore, the Congress determines that the PLO and its affiliates are a terrorist organization and a threat to the interests of the United States, its allies, and to international law and should not benefit from operating in the United States."

And under the title of "Prohibitions" the law mentioned:

"*Sec. 1003. Prohibition regarding the PLO*

It shall be unlawful, if the purpose be to further the interests of the Palestine Liberation Organization, or any of its constituent groups, any successor to any of those, or any agents thereof, on or after the effective date of this title.

(1) . . .

(2) . . .

(3) notwithstanding any provision of law to the contrary, to establish or maintain an office, headquarters, premises, or other facilities or establishments within the behest or direction of, or with funds provided by the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof.

Sec. 1004. Enforcement

(a) Attorney General. The Attorney General shall take the necessary steps and institute the necessary legal action to effectuate the policies and provisions of this title.

(b) Relief. Any district Court of the United States for a district in which a violation of this title occurs shall have authority, upon petition of relief by the Attorney General, to grant injunctive and such other equitable relief as it shall deem necessary to enforce the provisions of this title.

Sec. 1005. Effective Date

(a) Provisions of this title shall take effect 90 days after the date of enactment of this Act."

Thus in compliance with this law, the Attorney General of the United States has to request from the PLO to close its offices at the United Nations not later than 21 March 1988.

* * *

The dispute which has arisen between the United Nations and the United States concerns the closure of the Observer Mission of the Palestine Liberation Organization to the United Nations. This Mission enjoys the qualifications of "Permanent Observer Mission to the United Nations". It has acquired this qualification by the United Nations since 1974 when the General Assembly voted

the resolution 3237 (XXIX) on 22 November 1974. Since that date, that is, since 14 years, this Permanent Observer Mission has enjoyed the diplomatic immunities extended in accordance with the provisions of the Headquarters Agreement of 1947, to all United Nations members and Permanent Missions.

Article IV of this Agreement enumerates some of those facilities and immunities the American Authorities have to extend to members of the United Nations officials and to members of the Permanent Missions accredited to the United Nations.

Section 11 provides that the Federal, state or local authorities of the United States

> "shall not impose any impediments to transit to or from the Headquarters district of ... persons *invited* to the Headquarters district by the United Nations" (emphasis added),

and that: "The appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the Headquarters district."

Section 12 provides that section 11 is applicable *irrespective of relations between the governments* of the persons referred to in the latter section and the host State (emphasis added).

Section 13 provides that the host State shall grant visas "without charge and as promptly as possible" to persons referred to in section 11 and also exempts such persons from being required to leave the United States on account of any activities performed by them in their official capacity.

Article 105 of the Charter of the United Nations, paragraph 2, concerning privileges and immunities of the Members of the United Nations should also be extended to the members of the Permanent Observer Mission of the PLO to the United Nations.

On behalf of the spokesman for the Secretary-General, Mr. François Giuliani read out, on 22 October 1987, a statement concerning the status of the Permanent Observer Mission of the PLO. Describing the Secretary-General's position on the Observer Mission, he said:

> "The members of the PLO Observer Mission are, by virtue of resolution 3237 (XXIX), *invitees* to the United Nations. As such, they are covered by sections 11, 12 and 13 of the Headquarters Agreement of 26 June 1947. There is therefore a treaty obligation on the host country to permit PLO Observer Mission personnel to enter and remain in the United States to carry out their official functions at the United Nations Headquarters."

Consequently, it appears clearly that there exists a dispute between the United Nations and the United States of America raised by the Anti-Terrorism Act of 1987 which fixes 90 days for the closure of the PLO Observer Mission to the United Nations.

The question is one of compliance with international law. The Headquarters Agreement is a binding international instrument. The Anti-Terrorism Act, if applied, violates strongly this Agreement and the United States obligations towards the United Nations.

The Secretary-General of the United Nations tried to settle this dispute in accordance with the provisions of the Headquarters Agreement (section 21), "by negotiation or other agreed mode of settlement". He did not succeed. He suggested then to refer the matter to arbitration and named his arbitrator. He chose a highly qualified judge known for his integrity and wisdom, Mr. A. J. de Aréchaga, a former judge of the International Court of Justice and former President of this Court.

The United States accepted neither the negotiations nor the arbitration stipulated in section 21 of the Headquarters Agreement.

The Acting Permanent Representative of the United States addressed on 11 March 1988 a letter to the Secretary-General of the United Nations in which he said:

> "... I wish to inform you that the Attorney General of the United States has determined that he is required by the Anti-Terrorism Act of 1987 to close the office of the Palestine Liberation Organization Observer Mission to the United Nations in New York, *irrespective of any obligations the United States may have under the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations* ...
>
> Under the circumstances, the United States *believes that submission of the matter to arbitration would not serve a useful purpose.*" (Emphasis added.)

A similar letter was addressed on the same day, 11 March 1988 by the Attorney General Edwin Meese III to the Permanent Observer of the PLO to the United Nations. The letter referred to the Anti-Terrorism Act which becomes effective 21 March 1988. It adds:

> "The Act prohibits among other things, the Palestine Liberation Organization (PLO) from establishing or maintaining an office within the jurisdiction of the United States.
>
> *Accordingly, as of 21 March 1988, maintaining the PLO Observer Mission to the United Nations in the United States will be unlawful.*" (Emphasis added.)
>
> "The legislation charges the Attorney General with the responsibility of enforcing the Act. *To that end, please be advised that, should you fail to comply with the requirements of the Act, the Department of Justice will forthwith take action in United States federal court to ensure your compliance.* (Emphasis added.)
>
> Edwin MEESE III,
> Attorney General."

As a result of these differences of attitudes between the United Nations and the United States of America, the General Assembly of the United Nations was called for more than a meeting and overwhelmingly voted resolutions reaffirming, *inter alia*:

1. The right of the Permanent Observer Mission of the PLO to the United Nations, to be covered by the Provisions of the Headquarters Agreement and maintain its mission in New York.
2. That the Anti-Terrorism Act of 1987 is contrary to the international legal obligations of the host country under the Headquarters Agreement.
3. That there exists a dispute between the United Nations and the United States concerning the interpretation or application of the Headquarters Agreement.
4. That as a consequence of this dispute, settlement procedure set out in section 21 of the agreement should be set in operation.
5. That the Host Country should abide by its treaty obligations under the Agreement and provide assurance that it will take no action to infringe on the official functions of the Permanent Observer Mission of the PLO.

Section B of this resolution 42/229 of 3 March 1988, decides to request the International Court of Justice, in accordance with Article 96 of the Charter and in

pursuance of Article 65 of the Statute of the Court, for an advisory opinion on the questions referred to previously.

* * *

As required by the Charter of the United Nations, the Statute and Rules of the International Court of Justice, the request for an advisory opinion presented to the Court by the General Assembly of the United Nations, satisfies the procedural requirements.

The request has been presented in accordance with Article 96 of the Charter and in compliance with Chapter IV of the Statute (Art. 65) and with Part IV of the Rules (Arts. 102, 103 and 104).

For the substance.

An international agreement has been signed by the United Nations and the United States of America on 26 June 1947.

This agreement contains the rules and provisions which organized the relationship between the Host Country and the United Nations Organization. The Organization has set up its Headquarters in the city of New York, received Permanent Delegations and organized its work and activities during the last forty-two years in accordance with this agreement. Delegations to the United Nations have also established and maintained their missions under the auspices of its clauses.

The United States respected this Agreement and complied with its provisions since its entry into force in 1948. It has accorded members of the delegations all facilities, protection and immunities in the fulfilment of their official functions notwithstanding the political relations between their countries and the United States.

This has facilitated largely the work of the Organization and helped it to carry out its noble aims in maintaining peace and security, as it could and within its possibilities.

The Organization spared no effort in fulfilling its goals in:

> "reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small",

and in

> "establishing conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained",

and in "promoting social progress and better standards of life in larger freedom".

As a result of this endeavour, colonialism has witnessed its end, and the number of independent States has risen from 50 at the date of the establishment of the Organization to 160 now participating actively in securing peace, justice and the respect of international law in the world.

The respect of the United States to this Agreement has facilitated the work of the Organization and secured the necessary atmosphere for carrying out its responsibilities and international obligations.

Section 21 of this Agreement which implies the recourse to arbitration in case of dispute between the Organization and the United States is the one to be applied.

The security reservation which is contained in section 6 of Annex 2 of the agreement does not apply to this case because it clearly mentions:

> "... the right of the United States to safeguard its own security and completely to control the entrance of aliens into any territory of the United States *other than the Headquarters district and its immediate vicinity ... and such areas as it is reasonably necessary to traverse in transit between the same and foreign countries ...*" (Emphasis added.)

Thus, this reservation does not apply to the district of Manhattan where Permanent Delegations have their offices and residences. This district is governed by sections 11, 12 and 13 of the Headquarters Agreement.

The Permanent Observer Mission of the Palestine Liberation Organization has benefited, during the last 14 years, of the immunities extended by the agreement to *invitees* of the United Nations in its qualification as "Observer Mission". This has been extended to it by United Nations Resolution No. 3237 (XXIX) of 22 November 1974. All or almost all member States of the Organization have recognized this status to the PLO Observer Mission. The United States, which is the Host Country, has accorded its offices and members, during those 14 years the necessary facilities, immunities and protection. It gave its members the freedom of transit to and from the United Nations without hindrance. What has changed now?

The Anti-Terrorism Act of 1987 can neither amend nor annul the international agreement which the United States has signed 42 years ago and respected for this long period.

It is universally admitted, and we do not need to go into details of theories and practice, that, in case of conflict between international law and local or national law, the first has precedence. This is one of the axioms of the long history of international law.

This precedence of international law had maintained, during the last centuries, the justice, soundness and effectiveness of international relations.

Thus in case of dispute between the Headquarters Agreement and the Anti-Terrorism Act the first has precedence and should be binding on the United States.

In this dispute, section 21 of the Agreement should be applied.

As the question formulated by the General Assembly and requested in the advisory opinion, is very precise and clear, we expect the reply of the Court to be as precise and as clear:

> That the United States, as party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, *is* under an obligation to enter into arbitration in accordance with section 21 of the Agreement.

LETTER FROM THE AMBASSADOR OF THE UNITED STATES OF AMERICA TO THE NETHERLANDS TO THE REGISTRAR

25 March 1988.

I have the honor to refer to your letter of March 9, 1988, to Secretary of State Shultz, transmitting a copy of the Court's Order of the same date in *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*. The Court has informed the Government of the United States of America that, in response to UN General Assembly resolution 42/229 B, the Court intends to consider, as an advisory opinion, whether the arbitral procedure set forth in section 21 of the United Nations-United States Headquarters Agreement is the mandatory method for resolving a dispute concerning the applicability of the provisions of the agreement to the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations in New York. The Court has invited the United States to submit written statements by March 25 and to participate in oral hearings on April 11.

The United States wishes to inform the Court that on December 22, 1987, the President of the United States signed into law the Antiterrorism Act of 1987 (Title X of the Foreign Relations Authorization Act for Fiscal Years 1988 and 1989). The Attorney General of the United States has concluded that this statute was intended to direct the closure of the PLO Observer Mission in New York irrespective of any international legal obligation that the United States might have under the Headquarters Agreement. By letter dated March 11, 1988, the Attorney General accordingly directed the PLO Observer Mission to close by March 21, the effective date of the Act.

The PLO Mission did not comply with the March 11 order. On March 22, the United States Department of Justice therefore filed a lawsuit in the United States District Court for the Southern District of New York to compel compliance. That litigation will afford an opportunity for the PLO and other interested parties to raise legal challenges to enforcement of the Act against the PLO Mission. The United States will take no action to close the Mission pending a decision in that litigation. Since the matter is still pending in our courts, we do not believe arbitration would be appropriate or timely.

The United States respectfully declines the Court's invitation to submit further views on this issue at the oral proceedings scheduled for April 11.

Please accept my assurances of my Government's highest esteem for the Court.

Sincerely,

(Signed) John SHAD.

LETTER FROM THE MINISTER OF FOREIGN AFFAIRS OF THE GERMAN DEMOCRATIC REPUBLIC TO THE REGISTRAR

March 1989.

In reply to your telegram dated 9 March 1988, I have the honour to inform the International Court of Justice that in the opinion of the German Democratic Republic the United States of America as party to the agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed on 26 June 1947, had undertaken, under section 21, that any dispute between the United Nations and the United States concerning the interpretation or application of the agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred to an arbitral tribunal.

This position is based also on the legal situation described as reflected in the relevant report by the United Nations Secretary-General and confirmed in resolution 42/299 A which was adopted by 143 States.

Giving effect to the provisions of the Foreign Relations Authorization Act for the Fiscal Years 1988-89, section X, of 22 December 1987 is inconsonant with the international legal obligations entered into by the Host Country under the Headquarters Agreement. Thus, a dispute has emerged between the United Nations and the United States as parties to the above-said agreement as to the interpretation or application of that agreement.

The United Nations Secretary-General's report bears out that since 7 December 1987 the United Nations has been in contact with the United States in order to ensure that the relevant provisions of the Headquarters Agreement are applied with regard to the Palestine Liberation Organization which under resolution 3237 (XXIX) was invited to participate in the United Nations work and which has maintained a permanent observer mission to the world organization for 13 years.

With the talks, contacts and negotiating efforts of the United Nations having produced no results, the dispute between the United Nations and the United States over the above-mentioned issue continues to exist.

(Signed) Oskar FISCHER.

EXPOSÉS ORAUX

PROCÈS-VERBAUX DES AUDIENCES PUBLIQUES

tenues au palais de la Paix, à La Haye, les 11, 12 et 26 avril 1988, sous la présidence de M. Ruda, Président

ORAL STATEMENTS

MINUTES OF THE PUBLIC SITTINGS

held at the Peace Palace, The Hague, on 11, 12 and 26 April 1988, the President, Judge Ruda, presiding

PREMIÈRE AUDIENCE PUBLIQUE (11 IV 88, 10 h)

Présents : M. RUDA, *Président* ; M. Kéba MBAYE, *Vice-Président* ; MM. LACHS, NAGENDRA SINGH, ELIAS, ODA, AGO, SCHWEBEL, sir Robert JENNINGS, MM. BEDJAOUI, NI, EVENSEN, TARASSOV, GUILLAUME, SHAHABUDDEEN, *juges* ; M. VALENCIA-OSPINA, *Greffier*.

Présents également :

Pour l'Organisation des Nations Unies :

M. Carl-August Fleischhauer, secrétaire général adjoint, conseiller juridique ;
M. Ralph Zacklin, juriste principal, bureau du conseiller juridique ;
M^me^ Marcia Constable, assistante administrative, bureau du conseiller juridique.

OUVERTURE DE LA PROCÉDURE ORALE

Le PRÉSIDENT : La Cour est aujourd'hui réunie pour entendre, en application de l'article 66, paragraphe 4, de son Statut, des observations orales afférentes à la demande d'avis consultatif dont l'Assemblée générale des Nations Unies a décidé de la saisir par une résolution 42/229 B en date du 2 mars 1988 (ci-dessus p. 7-8). Je prierai le Greffier de bien vouloir donner lecture de la question sur laquelle l'avis consultatif de la Cour est demandé aux termes de cette résolution.

The REGISTRAR :

> "In the light of facts reflected in the reports of the Secretary-General [A/42/915 and Add.1], is the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations [resolution 169 (II)], under an obligation to enter into arbitration in accordance with Section 21 of the Agreement?"

Le PRÉSIDENT : Ainsi que le prescrit l'article 66, paragraphe 1, du Statut, le Greffier a immédiatement notifié la requête pour avis consultatif (ci-dessus p. 3-8), transmise à la Cour par une lettre du Secrétaire général datée du 2 mars 1988, à tous les Etats admis à ester en justice devant la Cour.

Dans une ordonnance du 9 mars 1988[1], la Cour a considéré, à la lumière des indications fournies par l'Assemblée générale, qu'une prompte réponse à ladite requête était désirable, selon les termes de l'article 103 de son Règlement, et qu'elle devait en conséquence prendre toutes mesures utiles pour accélérer la procédure. Par la même ordonnance, la Cour a prié le Secrétaire général de fournir à une date aussi rapprochée que possible les documents «pouvant servir à élucider la question» qui sont visés à l'article 65, paragraphe 2, du Statut de la Cour; ces documents sont parvenus à la Cour en plusieurs envois (ci-dessus p. 13-161). La Cour a en outre décidé, par cette ordonnance: que l'Organisation des Nations Unies et les Etats-Unis d'Amérique étaient jugés, conformément à l'article 66, paragraphe 2, de son Statut, susceptibles de fournir des renseignements sur la question qui lui avait été soumise pour avis consultatif, la date d'expiration du délai pendant lequel la Cour serait disposée à recevoir d'eux des exposés écrits sur la question étant fixée au 25 mars 1988; que les autres Etats parties au Statut de la Cour qui en auraient exprimé le désir pourraient soumettre un exposé écrit sur la question, le 25 mars 1988 au plus tard; et que des audiences s'ouvriraient aujourd'hui 11 avril 1988, au cours desquelles des observations sur les exposés écrits pourraient être faites devant la Cour par l'Organisation des Nations Unies, les Etats-Unis d'Amérique et les Etats qui auraient déposé des exposés écrits.

Dans les délais fixés à cet effet, des exposés écrits ou des communications assimilées à des exposés écrits ont été présentés par le Secrétaire général de l'Organisation des Nations Unies et par le Gouvernement des Etats-Unis d'Amérique, ainsi que par les gouvernements de la République arabe syrienne et de la République démocratique allemande (ci-dessus p. 165-188). Seul le Secrétaire général de l'Organisation des Nations Unies a manifesté l'intention de formuler des observations orales en l'espèce, et je constate que son représentant est présent à l'audience. Je donne donc la parole à M. Fleischhauer, conseiller juridique de l'Organisation des Nations Unies.

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[1] *C.I.J. Recueil 1988*, p. 3.

ORAL STATEMENT BY MR. FLEISCHHAUER

LEGAL COUNSEL OF THE UNITED NATIONS

Mr. FLEISCHHAUER: Mr. President, I am most grateful to be given the opportunity to make a brief statement to the Court in addition to the Written Statement which has been submitteed on behalf of the Secretary-General on 25 March 1988.

I

1. The Court will have seen from the Written Statement that the United Nations urges it to declare that indeed, in the light of the pertinent facts, there is an obligation for the United States of America to enter into the arbitration procedure provided for by section 21 of the Headquarters Agreement of 1947. As we have endeavoured to demonstrate in the Written Statement, the Headquarters Agreement is a treaty in force and a dispute exists between the United Nations and the United States concerning the implementation or application of that treaty. The dispute arises out of the United States Anti-Terrorism Act of 1987, the intent of which is to obtain the closure of the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations. We have also endeavoured to demonstrate that the United Nations has made a good-faith effort to reach a settlement of the dispute by means of negotiation or to agree on another method of settlement, which attempts however have failed.

2. In the discussions between the United Nations and the United States, prior to the adoption of resolution 42/229B of 2 March 1988, the question whether a dispute had already arisen with the adoption and signing into law of the Anti-Terrorism Act of 1987 played a particular role. The point is dealt with in paragraph 39 of the Written Statement submitted by the United Nations, but I would like to make some additional remarks on it. I would also like to come back briefly to the question of the completion of the negotiating stage of the procedure foreseen for the settlement of disputes in section 21 of the Headquarters Agreement, a matter which is dealt with in paragraph 42 of our Written Statement. Finally, I would like to explain briefly to the Court the position of the Secretary-General with respect to the proceedings which have in the meantime been instituted before a domestic court in the United States.

II

Mr. President, with respect to the existence of a dispute, the additional remarks which I would like to make are the following:

1. The notion of a dispute was defined by the Permanent Court of International Justice, in its decision in the *Mavrommatis* case, as being a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons. The International Court of Justice in its Advisory Opinion on the *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania* held not only that the existence of an international dispute is a matter for objective determination, but also that a dispute is a situation "in which the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations". At no point has the International Court of Justice or its

predecessor linked the notion of a dispute to an injury suffered. Nor does it follow from the general practice of States or literature that the existence of a dispute presupposes, of necessity, that an injury, a violation of existing rights, must have occurred. But even if a difference of viewpoints would not yet constitute a dispute, in spite of the wording of the definitions which I have just mentioned, the concrete threat of a violation or an injury is certainly sufficient to establish the existence of a dispute. In the present case, not only did the two sides hold clearly opposite views concerning the interpretation of the Headquarters Agreement, but there existed, with the signing into law of the Anti-Terrorism Act, a concrete threat of a violation of existing rights.

2. In connection with the case at issue, Mr. President, the United Nations has not sought to determine the earliest possible moment of the existence of a dispute. Needless to say, the United Nations is extremely concerned that the dispute has arisen and that the United Nations would have preferred to avoid it. The United Nations wishes to maintain harmonious relations with its Host Country, but at the same time the United Nations is determined and has an obligation to maintain its position under the Headquarters Agreement. Thus, the United Nations deliberately deferred any determination that a dispute existed up to the last possible moment in time from which an effective defence of the United Nations legal position would still have been possible. That stage was certainly reached by mid-January 1988. By that time, the President of the United States had signed the Anti-Terrorism Act into law and the United States had officially informed the United Nations of this. The Secretary-General, with a view to avoiding a confrontation between the Organization and the Host Country, had warned time and again that the entry into force of the law would lead to a dispute and had asked for assurances that the obligations of the Host Country under the Headquarters Agreement would be respected. No such assurances had been forthcoming, however, and when the Acting Permanent Representative of the United States, Ambassador Okun, informed the Secretary-General in his letter of 5 January 1988 (doc. No. 33 of the dossier), that the President had signed the Anti-Terrorism Act into law on 22 December 1987, the Ambassador also indicated that the law would take effect 90 days after that date. He also stated that because the provisions concerning the PLO Observer Mission, if implemented, would be contrary to the international obligations of the United States under the Headquarters Agreement, the Administration intended, during the 90-day period before this provision was to take effect, to engage in consultations with the Congress in an effort to resolve this matter. However, the Acting Permanent Representative did not give any assurances to the Secretary-General as to the maintenance of the arrangements concerning the Observer Mission. So the situation remained that an automaticism had been set in motion which would lead to the applicability of the Act after 90 days, which is, Mr. President, a very short time even if the dispute settlement procedure provided for in section 21 of the Headquarters Agreement was to be implemented only to the point of the interim decision provided for in section 21 *(b)*.

3. The uncertainty of whether, when and in what precise way the United States would interrupt the functioning of the PLO Mission under the Anti-Terrorism Act does not alter the fact that the United Nations had to rely on the official communication of 5 January 1988 that the Act was to take effect 90 days after signature by the President; after the signing of the law, the mere lapse of 90 days would permit the United States Government under the domestic law of the United States to act in violation of the Headquarters Agreement. Nor does the fact that the United States Government, in order to enforce the law, had to have recourse to an American court, put off the existence of a dispute. This is so because after 90

days, the defence mechanism of section 21 would be rendered ineffective; court action by the United States would become immediately possible, the duration and outcome of which would be unpredictable. Besides, the action taken in the domestic court under the Act is not intended on the part of the United States to secure a re-interpretation of the law or a delay in its implementation, but it is for the specific purpose of closing the Mission.

4. Mr. President, all that might have been different and indeed the Secretary-General would have been spared the need to invoke a dispute, had the United States been in a position to give the assurances asked for by the Secretary-General in his letter of 7 December 1987 (doc. No. 31 of the dossier). The invoking of the dispute could at least have been postponed if the running of the 90 days had been suspended for such a span of time as was necessary for the United States Government to clarify its own position, for example by undertaking to give the United Nations no less than 60 days notice before any action was taken under the law, thus enabling the United Nations to initiate the dispute settlement procedure foreseen under section 21. But such assurances were not given, although they were repeatedly requested and discussed between the United Nations and the United States.

5. When the meeting of 12 January 1988 between the Legal Adviser of the State Department and myself again did not produce any assurances, then the Secretary-General decided that he had to declare that a dispute existed. The threat of the impossibility of reaching at least the interim measures phase of the section 21 procedure guided the Secretary-General in this choice of the point in time when he stated that a dispute existed. For the reasons indicated in paragraph 19 of the Written Statement, the United Nations had calculated that 60 days would be the minimum time to reach the interim measures stage and with that in mind, the Secretary-General asked to have the first meeting under section 21 on 20 January 1988.

6. Mr. President, this is why the United Nations has been and still is of the opinion that a dispute existed as far back as 14 January 1988, even before the situation had ripened into an accomplished, perfected violation of the Headquarters Agreement. The General Assembly, for its part, recognized in its resolution 42/229B of 2 March, at the time the question was addressed to the Court on the basis of the reports submitted by the Secretary-General to the General Assembly, that a dispute existed.

III

As to the good faith attempts of the United Nations to resolve the dispute by negotiation or other agreed mode of settlement, I would like to say the following:

1. As was pointed out in paragraph 42 of the Secretary-General's statement, in order to find that the United States is under an obligation to enter into arbitration under section 21 of the Headquarters Agreement, it is necessary to show that the United Nations has made a good faith attempt to resolve the dispute through prior negotiation or some other agreed mode of settlement.

2. The summary of facts contained in paragraphs 19-29 of the Secretary-General's written Statement provides a concise account of the attempts made by the United Nations to achieve such a negotiated settlement of the dispute or to reach agreement on another mode of settlement. I believe that the Secretary-General's Written Statement and the documents submitted to the Court (in particular the reports of the Secretary-General to the General Assembly — contained in documents 1, 2 and 105 of the dossier) speak largely for themselves in this regard, but it may, nevertheless, be useful that I expand on the Written

Statement and provide the Court with the United Nations perspective of the negotiations in which it engaged with the United States following the signing into law of the Anti-Terrorism Act, and indeed already before that signature.

3. Mr. President, from the United Nations point of view, these negotiations constituted a continuous dialogue between the two sides conducted on three levels: between the Secretary-General and the Permanent Representative or Acting Permanent Representative of the United States to the United Nations, between myself, as Legal Counsel of the United Nations, and my counterpart, the State Department Legal Adviser, Mr. Sofaer; and between myself and the legal Adviser of the United States Mission to the United Nations, Mr. Robert Rosenstock. The object of this dialogue, with a greater or lesser degree of technicality depending on the interlocutors, was the same: to achieve a negotiated resolution of the dispute arising from the proposed application and enforcement of the Anti-Terrorism Act to the Palestine Liberation Organization Observer Mission to the United Nations, or alternatively to resolve the dispute through the wording specified in section 21 of the Headquarters Agreement. For purposes of considering this issue, that is the attempt to reach a negotiated solution, as has been pointed out in the Secretary-General's Written Statement, it appears unnecessary to show that the negotiations were held formally within the framework of section 21, but rather that negotiations actually took place.

4. The Secretary-General's personal involvement in these negotiations actually pre-dated the adoption of the Anti-Terrorism Act (cf. para. 7 of the Written Statement). The intervention of the Secretary-General at that stage might be described as *preventive* inasmuch as it sought the exclusion of the PLO Observer Mission from the scope of the legislation or alternatively to obtain assurances that the legislation if passed would not be implemented in a manner detrimental to the existing arrangements for the PLO Observer Mission. The Secretary-General's involvement in the *negotiation* phase of the dispute might be said to have commenced on 14 January 1988 with his letter to the United States Acting Permanent Representative (cf. doc. No. 34 of the dossier). From that time forward the Secretary-General maintained an on-going dialogue, formal and informal, with the Permanent Representative and other high officials of the United States Government, both in New York and Washington.

5. At the level of the respective Legal Advisers of the United Nations and the United States, the contacts beween myself and Mr. Sofaer were initiated on 12 January 1988 and continued through two personal meetings, telephone conversations and correspondence until 11 February 1988, when I informed him of the United Nations choice of an arbitrator (cf. doc. No. 36 of the dossier). In my contacts, I sought clarification of the intentions of the United States Government given its continued expressions of a willingness to seek a resolution of the problem. I pressed for the application of the Act in conformity with the international obligations of the Host Country towards the United Nations or alternatively the suspension of the 90-day period in order to allow time for the dispute settlement procedure especially agreed upon as foreseen in section 21 *(b)*.

6. The third, and in some respects most active level of negotiations, was conducted in New York between the Legal Counsel of the United Nations and the Legal Adviser of the United States Mission to the United Nations. A detailed dialogue took place on all aspects of the dispute in the period between the signing into law of the Anti-Terrorism Act and the report of the Secretary-General to the General Assembly of 10 February 1988. These negotiations may be described as working level discussions since they often concerned detailed technical aspects of the dispute settlement procedure outlined in section 21 of the Headquarters Agreement, particularly the time-table for a possible arbitration and its rules of procedure.

7. There can be little doubt that the United Nations made every effort within its means to resolve the dispute through negotiation or other agreed mode of settlement. The negotiations took many forms and were held in many different fora and were considered by the United Nations as a matter of the highest priority. As I have already stated, they were, on the part of the Secretary-General, motivated by a strong desire to avoid a painful confrontation with the Host Country.

IV

1. Finally, Mr. President, in order to given the Court a full picture of the situation with which we are confronted, I should mention briefly that, as appears in Part IV of the dossier submitted to the Court, pursuant to section 1004 of the Anti-Terrorism Act, the Attorney General of the United States has instituted proceedings in the Federal District Court for the Southern District of New York to obtain an injunction to close the PLO Observer Mission. The PLO, its Observer Mission and its members have been summoned to present their views by today, 11 April. The defendants, of course, intend to contest the injunction sought by the Attorney General.

2. By a letter dated 31 March, I informed the United States District Judge dealing with this matter of the wish of the United Nations to submit an *amicus curiae* brief at, or shortly after the time that the Palestine Liberation Organization files its own response. I have informed the District Judge that the United Nations is most concerned with the international legal issues raised in this case and that it is anxious to present its views as *amicus curiae* to assist the court in resolving these issues. I have also stated that among those international legal issues, the United Nations has a particular concern relating to the obligation of the United States to enter into arbitration to settle a dispute that exists between the United Nations and the United States concerning the interpretation or application of the Headquarters Agreement, using the agreed settlement of disputes provisions of that agreement, as contained in section 21. In this respect, I have informed the District Court Judge of the request made by the General Assembly to this Court for an advisory opinion on the issue of whether the United States of America is under an obligation to enter into arbitration in accordance with section 21 of the Headquarters Agreement and I have stated that the United Nations believes it would be useful to be able to present to the District Court the advisory opinion of this Court at such time as the opinion becomes available.

3. The District Judge has not yet pronounced himself on the admission of the United Nations as an *amicus curiae*, but the Secretary-General has every reason to believe that his decision will be a positive one. The United Nations has been careful to limit itself to being an *amicus curiae* because in that role the Organization can offer expert advice to the court without becoming a party to the proceedings and without waiving its immunity. The Organization indeed sees its place before a domestic court of a member State in a matter concerning the Headquarters Agreement, if at all, as an *amicus curiae* and not in the role of the party to a proceeding, who would then be bound by the outcome of the domestic litigation. For reasons of principle and practice, the United Nations does not consider it appropriate to submit itself to the judgments of domestic courts in matters concerning the interpretation or application of its Headquarters Agreement.

4. Mr. President, following the filing by the Attorney General of the summons against the PLO on 22 March, another lawsuit has been instituted before the same domestic court in the United States — the Federal District Court for the Southern

District of New York — dealing with essentially the same issues. This lawsuit, denominated *Mendelsohn* v. *Meese*, was instituted by 65 private American citizens and organizations and is directed against the application of the Anti-Terrorism Act as such and not only against its application to the PLO Observer Mission to the United Nations. In my letter to the United States District Judge of 31 March, I made it clear that the request of the United Nations to be admitted as an *amicus curiae* relates solely to the complaint filed by the United States against the Palestine Liberation Organization. Our request does not concern *Mendelsohn* v. *Meese*, and I have stated that the United Nations takes no position and wishes to express no views with respect to the First Amendment or other United States constitutional arguments which predominate in the latter case.

Again, Mr. President, I am grateful to have had this opportunity through this statement to give the Court additional information.

Le PRÉSIDENT: Je constate que la Cour a entendu les observations qui avaient été annoncées. Au nom de la Cour je voudrais remercier le Secrétaire général de l'Organisation des Nations Unies de l'aide qu'il a apportée à la Cour en participant à la phase orale en cette espèce. Je remercie également son représentant, M. Fleischhauer, à la présente audience.

QUESTIONS BY JUDGES SCHWEBEL, GUILLAUME, SHAHABUDDEEN AND ODA

QUESTIONS BY JUDGE SCHWEBEL[1]

Judge SCHWEBEL: 1. You have emphasized the importance of appropriate assurances from the United States. Particularly in view of the letter of the Ambassador of the United States to the Netherlands to the Registrar of 25 March 1988 which states:

> "The PLO Mission did not comply with the March 11 order. On March 22, the United States Department of Justice therefore filed a lawsuit in the United States District Court for the Southern District of New York to compel compliance. That litigation will afford an opportunity for the PLO and other interested parties to raise legal challenges to enforcement of the Act against the PLO Mission. The United States will take no action to close the Mission pending a decision in that litigation."

has the United States provided assurances that the functioning of the PLO Observer Mission will not be curtailed pending a decision in that litigation? Why do not these assurances suffice for the time being?

2. I appreciate the position of the United Nations as to the inappropriateness of its submitting a difference over the Headquarters Agreement to a domestic court. Nevertheless, has the United Nations tacitly "agreed" to United States Court settlement of the application of the Anti-Terrorism Act to the PLO Observer Mission as an alternative means of settlement — not necessarily as a final means but an alternative means? In that regard, it may be observed that you have informed us that the United Nations contemplates submitting a brief *amicus curiae* to the District Court.

3. How do you interpret the statement — particularly the last sentence — in the letter of the Acting Permanent Representative of the United States to the United Nations to the Secretary-General of 11 March 1988 that the Attorney General of the United States had determined that he was required to close the PLO Observer Mission

> "irrespective of any obligations the United States may have under the Agreement between the United Nations and the United States Regarding the Headquarters of the United Nations. If the PLO does not comply with the Act, the Attorney General will initiate legal action to close the PLO Observer Mission ... The United States will not take other actions to close the Observer Mission pending a decision in such litigation. Under the circumstances, the United States believes that submission of this matter to arbitration would not serve a useful purpose."?

4. In a related vein, may I ask how you interpret the statement in Ambassador Shad's letter of 25 March 1988 to the Registrar that:

> "The United States will take no action to close the Mission pending a decision in that litigation. Since the matter is still pending in our courts, we do not believe arbitration would be appropriate or timely."?

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[1] See pp. 202–204, *infra*.

5. Let us assume, for the purposes of argument, that the United States District Court were to hold that the Anti-Terrorism Act cannot lawfully be enforced against the PLO Observer Mission, on the ground that enforcement would conflict with the international obligations of the United States, or would be unconstitutional, or otherwise unlawful. Would a dispute then exist between the United Nations and the United States? If not, is not the United Nations request for arbitration premature?

QUESTION DE M. GUILLAUME [1]

M. GUILLAUME: L'*Attorney General* des Etats-Unis a décidé d'assurer en droit américain l'application de la loi du 22 décembre 1987 en saisissant le juge américain d'une demande d'injonction. Cela étant dit, il résulte de certaines pièces du dossier que vous nous avez communiquées, notamment de la conférence de presse du département de la justice du 11 mars 1988 (ci-dessus p. 155), que l'*Attorney General* aurait peut-être eu d'autres moyens à sa disposition pour assurer l'application de la loi. La question est la suivante: quels seraient, s'il y en a, ces autres moyens et ceux-ci sont-ils encore ouverts à l'*Attorney General*?

QUESTION BY JUDGE SHAHABUDDEEN [2]

Judge SHAHABUDDEEN: Mr. Fleischhauer, my question will relate to your discourse on the concept of the dispute as followed through by some of the questions put by Judge Schwebel. I understand from the documentation and from the way you cast your case this morning that you apprehend that the opposing legal position, if it were advanced here this morning by Counsel for the United States, would be that the law has not been enforced specifically, consequently there could be no breach of the Headquarters Agreement and consequently there could be no dispute that I would feel is the case that you apprehend you have to meet on this question to what is a legal dispute. Do you tackle it by saying that you have encountered no case in which the concept of a dispute has been linked to the concept of an injury. I find that, without committing myself, to be an attractive proposition for which I believe positive support can be found in the dissenting judgment of the learned and distinguished Chief Justice of Australia, sitting in this Court as a Judge *ad hoc* in the *Nuclear Tests* case which carefully distinguished between a dispute and the merits of a claim generating the dispute.

We regard this intention as sound. It perhaps has implications for judicial propriety in economy as to how far this Court can entertain the substance of the case. Suppose you are wrong. I don't say wrong. Suppose you are wrong. Would you then be thinking of shifting on the other leg and approaching the matter this way. You referred to a threat. You said that with the signing of an act there came into being a concrete threat of a violation and somewhere in your learned brief, I think it is at page 174, *supra*, you also refer to that concept. Let me read a few lines, at page 177, paragraph 39. You see:

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[1] Voir ci-après p. 204-205.
[2] See p. 205, *infra*.

"The automaticity of the process of bringing the ATA into force which was initiated with the signing of the ATA into law, objectively constitutes an immediate threat to bring about the closure of the facility from which PLO representation to the United Nations is accomplished, and this immediate threat is itself (particularly when considered in the context of the time factor described in para. 18 above) sufficient to create a dispute in the absence of an assurance", etc.

May I invite you to consider whether the Court should be concerning itself with two questions of interpretation. The first question would be whether under the Headquarters Agreement the United Nations is entitled not only to ensure that its invitees maintain an office but also that they should be able to do so free from unnecessary harassment or interference at all times during their tenure. And if you give an affirmative answer to that question, the second and consequential question of intepretation which I will put to you for your response is whether the enactment of the ATA as from the time of assent constituted a threat which interfered with the right of the PLO Observer Mission to function without unnecessary interference and was consequently productive of present injury constituting a present violation of the Treaty as from the time of the signing of the Act. Should I understand you, from your reporting this morning and from your brief, that your case as presented so far did not quite reach this point.

QUESTION BY JUDGE ODA[1]

Judge ODA: My question is more or less related to the question put by Judge Shahabuddeen, but I would put the following question to Mr. Fleischhauer.

Section 21 of the 1946 Headquarters Agreement reads:

"Any dispute between the United Nations and the United States concerning the interpretation or application of the Headquarters Agreement which is not settled by negotiation or other agreed mode of settlement shall be referred for final decision to a tribunal or three arbitrators."

Mr. Fleischhauer are you aware that at the time of the request for an advisory opinion there was such a dispute between the United Nations and the United States. My question is rather simple, whether the dispute between the United Nations and the United States is the one concerning the interpretation of the agreement or the application of the agreement or concerning both the interpretation or application of the Headquarters Agreement. In other words I would like to be informed of the views of the Legal Counsel of the United Nations concerning the interpretation or the wording of "the interpretation or application" of the Headquarters Agreement under section 21 of the 1946 Headquarters Agreement.

The PRESIDENT: There are no other questions Mr. Fleischhauer. You have received many questions from the bench and we do not expect you to reply immediately. We are going to receive them in writing and you will have sufficient time to reflect on them and then to reply as soon as possible because we want to be in the deliberation of the Court as soon as possible. So, I think, Mr. Fleischhauer, you will have some work to do this afternoon. Therefore I think there is no other business before the Court and I declare the meeting closed.

The Court rose at 11.10 a.m.

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[1] See p. 205, *infra*.

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The PRESIDENT: There are no other questions Mr. Fleischhauer. You have received many questions from the bench and we do not expect you to reply immediately. We are going to receive them in writing and you will have sufficient time to reflect on them and then to reply as soon as possible because we want to be in the deliberation of the Court as soon as possible. So, I think, Mr. Fleischhauer, you will have some work to do this afternoon. Therefore I think there is no other business before the Court and I declare the meeting closed.

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[1] See p. 205, *infra*.

does not constitute the assurance sought by the United Nations with respect to the dispute. Nor is the existence of the dispute itself in any way affected by the statement in the Ambassador's letter.

2. Mr. President, the second question put to me by Judge Schwebel is reproduced in paragraph 2 of page 199, *supra*.

My reply is as follows:

There is no tacit agreement on the part of the United Nations that the court proceedings actually underway before the Federal District Court for the Southern District of New York constitute an alternative means of settlement in the sense of section 21 *(a)* of the Headquarters Agreement. As I informed the Court yesterday the United Nations has deliberately chosen to become in these proceedings an *amicus curiae* of the court, and not an intervening party. The dispute here in question is a dispute between the United States and the United Nations and therefore of necessity, the United Nations would have to be a party to any other alternative dispute settlement procedure.

Moreover, it follows from the letter which I addressed to the District Judge on 31 March and which I mentioned yesterday, that the United Nations does not agree in any way with the proceedings in the American court. As I informed the Court yesterday, I have stated in that letter that among the international legal issues involved, the United Nations has a particular concern relating to the obligation of the United States to enter into arbitration to settle a dispute that exists between the United Nations and the United States concerning the interpretation and application of the Headquarters Agreement using the agreed mode of dispute settlement provisions of that Agreement contained in its section 21.

Furthermore, in our internal deliberations on the question of whether there might be a possibility of becoming more than an *amicus curiae* and to intervene in the proceedings, the question that such an intervention might then be construed as a tacit agreement to alternative means of dispute settlement was on our minds. And one of the reasons which clearly spoke against our going beyond the role of an *amicus curiae* was precisely that we wanted to avoid a misperception of our intentions in this respect.

Finally, the notion that by entering an appearance as *amicus* in the Federal District Court, the United Nations has tacitly agreed to that forum as an alternative means of settlement, would not be consistent with the position of the United States regarding the applicability of section 21.

3. Mr. President, the third question presented to me by Judge Schwebel is reproduced in paragraph 3 on page 199, *supra*.

I think that the parts of the letter of the Permanent Representative of 11 March cited by Judge Schwebel shows a misconception on the part of the sender of the letter of the relationship between international law and domestic law. This letter seems to overlook the fact that while in any democratic country the legislative branch of government has the power to prevent the executive branch and all other branches of government internally from complying with an international obligation, that does not do away with the existence of the international obligation under international law. Even if compliance with an international obligation is prevented internally, the obligation remains; an international responsibility ensues, and such international dispute settlement procedure as may be foreseen remains in place. Therefore, I could not accept the statement contained in the letter to the effect that the Attorney General was required to close the Office of the PLO Observer Mission, irrespective of any obligations the United States may have under the Headquarters Agreement as being justified.

With respect to the statement to the effect that the United States will not take other actions to close the Observer Mission pending a decision in such domestic litigation, I should like to refer to my answer to the first question of Judge Schwebel which was to the effect that this sentence does not provide the assurance sought with respect to the dispute by the Secretary-General. Under the circumstances, I cannot see why the submission of this matter to arbitration would not serve a useful purpose. Since the dispute settlement clause and the ensuing obligation to arbitrate have not been removed by the enactment of the Anti-Terrorism Act, arbitration remains the only way in which the dispute must be resolved. In this respect, Mr. President, I would like to refer to the letter dated 15 March 1988 from the Secretary-General addressed to the Acting Permanent Representative of the United States to the United Nations. That letter is contained in Annex 1 to document 106 of the Dossier.

4. Mr. President, the fourth question put to me by Judge Schwebel is reproduced in paragraph 4, on page 199, *supra*.

My answer is as follows:

The statement in Ambassador Shad's letter of 25 March to the Registrar mentioned by Judge Schwebel's question, appears to indicate that once the matter is no longer pending in the United States courts, arbitration might become appropriate and timely. However, it follows from the presentation of the United Nations that we regard arbitration as having been both timely and appropriate ever since the attempts to find a negotiated solution or other agreed means of dispute settlement remained unsuccessful.

5. The fifth question put to me by Judge Schwebel is reproduced in paragraph 5, on page 200, *supra*.

The United Nations request for arbitration is not premature. If the domestic courts of the United States, as I sincerely hope, were to hold that the Anti-Terrorism Act cannot lawfully be enforced against the PLO Observer Mission on the ground that enforcement would conflict with the international obligations of the United States, or would be unconstitutional or otherwise unlawful, that would not automatically put an end to the dispute. The law itself, the enactment of which is the basis of the dispute, would remain. And it would remain to be seen whether the pronouncement of the domestic court makes the law become totally moot. But even if that were the case, that would not mean that the dispute has never existed, that the dispute would merely be terminated. Since the dispute existed the dispute settlement procedure was applicable and the dispute settlement procedure foreseen for the present case foresees arbitration.

I would like to add this: if one were to hold that as long as a return to legality is possible, arbitration is premature, then, I am afraid, that arbitration could very rarely take place.

II

Mr. President, I would like to come now to the question asked of me by Judge Guillaume and which is to be found on page 200, *supra*.

While I am not very familiar with the domestic law of the United States, I know that my colleagues dealing with the domestic law aspects of this matter were apprehensive that the Attorney General might choose a speedier procedure. And, in this connection, I note that the Palestine Information Office in Washington was closed, albeit under a different Act, namely, the Foreign Missions Act, after a court procedure which was certainly shorter and speedier than the

proceedings underway in New York. So I must suppose that there are other means open to the Attorney General, but I cannot comment on this matter with certainty.

III

I would next turn to the questions put to me by Judge Shahabuddeen and which are to be found on pages 200 and 201, *supra*.

My reply is as follows:

Yes, indeed, Mr. President, I think that Judge Shahabuddeen's point is well taken. The United Nations has endeavoured to show in our written statement and in our additional remarks of yesterday, that a dispute existed in the present matter even before the divergence of views on a point of law or fact had led to actual injury, to an actual violation of a legal right. While we have argued this point, we had not gone further and looked into the question raised by Judge Shahabuddeen, namely, what would be the position if one assumed that "present injury" was regarded as constituting a precondition for the determination of a dispute. My colleagues and I have given thought since yesterday to this matter and we have indeed come to the conclusion that if one regards "present injury" as a necessary precondition for the determination of the dispute, then one would, first of all, to a certain degree, be obliged to go into the substance of the matter in order to determine whether in part there exists a dispute.

I would agree with Judge Shahabuddeen that then the point could validly be made that the obligations of the Host Country to ensure adequate working facilities for the invitees of the Organization comprise not only that the Permanent Observers must be allowed to have an office, but also that they should be free from unnecessary harassment or interference at all times during their tenure. And, I also believe that it can be validly claimed that the enactment of a law that is designed to lead to the closure of the Mission through a court proceeding that can be initiated after 90 days in the domestic courts of the Host Country would be at variance with the said obligation.

IV

Finally, Mr. President, I come to the question asked by Judge Oda and which is to be found on page 201, *supra*.

My answer is that the present dispute concerns both the interpretation and the application of the Headquarters Agreement. Interpretation is, according to the rule laid down in Article 31 of the Vienna Convention on the Law of Treaties of 1969, the meaning a State gives to the terms of a treaty in good faith and in accordance with their ordinary meaning, in their context and in the light of their object and purpose. As far as the present dispute is concerned, it is one of interpretation, inasmuch as the Host Country puts into question that the Headquarters Agreement places upon it the obligation to maintain the arrangements in regard to the PLO Observer Mission as they have existed for the past 14 years.

The application of the Headquarters Agreement is concerned inasmuch as the Host Country has arrogated for itself, with the enactment of the Anti-Terrorism Act, the possibility to unilaterally infringe upon the obligations it has towards the United Nations regarding the PLO Mission after the lapse of 90 days claiming supercession of that international treaty by a simple enactment of domestic law.

V

Mr. President, these are the answers which I would like to give on behalf of the United Nations to the questions put to me at yesterday's hearing.

CLOSING OF THE ORAL PROCEEDINGS

The PRESIDENT: On behalf of the Court I thank Mr. Fleischhauer for the replies given to the questions put yesterday by Members of the Court.

With these replies the Court closes the oral proceedings foreseen in the Order of 9 March 1988. The Court will now begin its deliberation on this advisory opinion and according to the terms of the resolution adopted by the General Assembly, the Court will work expeditiously to finish as soon as possible and to give the reply that has been asked by the General Assembly.

The Court rose at 10.35 a.m.

TROISIÈME SÉANCE PUBLIQUE (26 IV 88, 10 h)

Présents: M. RUDA, *Président*; M. MBAYE, *Vice-Président*; MM. NAGENDRA SINGH, ELIAS, ODA, AGO, SCHWEBEL, sir Robert JENNINGS, MM. BEDJAOUI, NI, EVENSEN, TARASSOV, *juges*; M. VALENCIA-OSPINA, *Greffier*.

LECTURE DE L'AVIS CONSULTATIF

Le PRÉSIDENT: La Cour se réunit aujourd'hui pour rendre en audience publique, conformément à l'article 67 de son Statut, l'avis consultatif concernant l'*Applicabilité de l'obligation d'arbitrage en vertu de la section 21 de l'accord du 26 juin 1947 relatif au siège de l'Organisation des Nations Unies*, que l'Assemblée générale des Nations Unies l'a priée de donner aux termes de sa résolution 42/229 B en date du 2 mars 1988. La question posée à la Cour par l'Assemblée était la suivante:

[Le Président lit la question[1].]

Je rappelle qu'en l'espèce la Cour, à la lumière des indications fournies par l'Assemblée générale dans cette résolution, a décidé, ainsi qu'il est prévu à l'article 103 de son Règlement, d'accélérer la procédure.

MM. Lachs, Guillaume et Shahabuddeen, qui ont tous trois pris part au délibéré et au scrutin final, ont malheureusement été empêchés de siéger aujourd'hui.

Les premiers paragraphes de l'avis retracent le déroulement de la procédure en l'affaire. Selon l'usage, je ne donnerai pas lecture de ces paragraphes. Je ne lirai pas non plus les paragraphes qui contiennent l'exposé des faits. Toutefois, avant de procéder à la lecture des paragraphes suivants, et aux fins d'en permettre une meilleure compréhension, je rappellerai quelques-uns de ces faits. L'avis en comporte un résumé beaucoup plus complet.

Les faits concernent la mission permanente d'observation de l'Organisation de libération de la Palestine auprès de l'Organisation des Nations Unies à New York. Par la résolution 3237 (XXIX) du 22 novembre 1974 de l'Assemblée générale, l'OLP a été invitée à participer aux sessions et aux travaux de l'Assemblée générale en qualité d'observateur; en conséquence, elle a installé une mission d'observation en 1974 et possède un bureau à New York, hors du district administratif du Siège de l'Organisation des Nations Unies.

En mai 1987, une proposition de loi a été présentée au Sénat des Etats-Unis d'Amérique, ayant pour objet de «rendre illégaux la création ou le maintien aux Etats-Unis d'un bureau de l'Organisation de libération de la Palestine». Cette proposition de loi fut présentée à l'automne 1987 au Sénat comme amendement au *Foreign Relations Authorization Act, Fiscal Years 1988 and 1989* (loi d'ouverture de crédits pour les affaires étrangères, exercices budgétaires 1988 et 1989). Les termes de ce texte laissaient craindre que le Gouvernement américain chercherait à fermer le bureau de la mission d'observation de l'OLP si la loi était promulguée. En conséquence, le 13 octobre 1987, le Secrétaire général a souligné dans une lettre

[1] Voir ci-dessus p. 9.

adressée au représentant permanent des Etats-Unis auprès de l'Organisation des Nations Unies que la législation envisagée était contraire aux obligations qui découlent de l'accord de siège.

Les dispositions de l'amendement précité ont été incorporées dans la loi d'ouverture de crédits pour les affaires étrangères, exercices budgétaires 1988 et 1989, en tant que titre X, sous le nom de *Anti-Terrorism Act of 1987* (loi de 1987 contre le terrorisme). Le 7 décembre 1987, en prévision de l'adoption de ce texte par le Congrès des Etats-Unis, le Secrétaire général a rappelé au représentant permanent des Etats-Unis sa position, et a demandé, pour le cas où le texte proposé acquerrait force de loi, qu'on lui donne l'assurance que les arrangements en vigueur concernant la mission d'observation de l'OLP ne seraient pas affectés.

La Chambre des représentants et le Sénat des Etats-Unis ont adopté la loi contre le terrorisme les 15 et 16 décembre 1987, et le jour suivant l'Assemblée générale a adopté la résolution 42/210 B par laquelle elle priait le pays hôte de respecter les obligations que lui imposait l'accord et, à cet égard, de s'abstenir de prendre toute mesure qui empêcherait la mission de s'acquitter de ses fonctions officielles.

Le 22 décembre le président des Etats-Unis a signé et promulgué la loi d'ouverture de crédits pour les affaires étrangères, exercices budgétaires 1988 et 1989. La loi de 1987 contre le terrorisme qui en faisait partie devait, selon ses propres termes, entrer en vigueur quatre-vingt-dix jours après cette date. En informant le Secrétaire général de ce fait, le représentant permanent par intérim des Etats-Unis a déclaré le 5 janvier 1988 que le Gouvernement des Etats-Unis avait «l'intention de mettre à profit [ce] délai pour des consultations avec le Congrès afin de régler la question». Cependant, le Secrétaire général a répondu le 14 janvier 1988 en faisant observer qu'il n'avait pas reçu l'assurance qu'il avait demandée et qu'il ne considérait pas que les déclarations des Etats-Unis permettaient de compter sur le plein respect de l'accord de siège. Il a poursuivi en indiquant qu'il existait «un différend entre l'Organisation et les Etats-Unis au sujet de l'interprétation et de l'application de l'accord de siège» et qu'il invoquait la procédure de règlement des différends énoncée à la section 21 de cet accord. Le Secrétaire général a ensuite proposé que des négociations commencent conformément à la procédure établie à la section 21 de l'accord.

Tout en acceptant que des discussions officieuses aient lieu, les Etats-Unis ont fait savoir qu'ils étaient encore en train d'évaluer la situation qui résulterait de l'application de la loi et qu'ils ne pouvaient pas prendre part à la procédure de règlement des différends prévue à la section 21. Le 11 février 1988, le conseiller juridique de l'Organisation des Nations Unies a fait savoir au conseiller juridique du département d'Etat que l'Organisation des Nations Unies avait choisi son arbitre en vue d'un arbitrage aux termes de la section 21.

Le 2 mars 1988, l'Assemblée générale a adopté deux résolutions sur la question. Dans la première, la résolution 42/229 A, l'Assemblée a exprimé son opinion que l'application de la loi contre le terrorisme d'une façon qui empêcherait de maintenir les locaux et les installations de la mission d'observation de l'OLP serait contraire aux obligations juridiques internationales contractées par les Etats-Unis au titre de l'accord de siège et que la procédure de règlement des différends visée à la section 21 de l'accord devait être engagée. L'autre résolution, la résolution 42/229 B, que j'ai déjà mentionnée, priait la Cour de donner un avis consultatif.

Le 11 mars 1988, le représentant permanent par intérim des Etats-Unis a informé le Secrétaire général que l'*Attorney General* avait établi que la loi contre le terrorisme le mettait dans l'obligation de fermer le bureau de la mission d'observation de l'OLP «quelles que soient les obligations qui incombent aux Etats-Unis en vertu de l'accord entre l'Organisation des Nations Unies et les

Etats-Unis relatif au siège de l'Organisation des Nations Unies», mais que s'il était nécessaire d'intenter une action en justice pour faire appliquer la loi il ne serait pas pris d'autres mesures pour en obtenir la fermeture tant que cette action n'aurait pas abouti. Dans ces conditions, les Etats-Unis estimaient que soumettre l'affaire à l'arbitrage ne serait d'aucune utilité. Le Secrétaire général a énergiquement contesté ce point de vue dans une lettre du 15 mars. Entre-temps, dans une lettre datée du 11 mars, l'*Attorney General* avait averti l'observateur permanent de l'OLP qu'à compter du 21 mars le maintien de sa mission serait illégal. La mission de l'OLP ne s'étant pas conformée aux prescriptions de la loi contre le terrorisme, l'*Attorney General* indiquait que, pour la contraindre à s'exécuter, il avait saisi le tribunal fédéral du district sud de New York. Dans leur exposé écrit du 25 mars, les Etats-Unis ont informé la Cour que dans l'attente d'une décision judiciaire ils ne prendraient aucune mesure pour faire fermer la mission et que la question ayant été portée devant leurs tribunaux ils pensaient qu'un arbitrage ne serait pas opportun et que ce ne serait pas le moment pour y recourir.

J'entame maintenant la lecture du texte de l'avis, en commençant par le paragraphe 33, dans lequel la Cour définit sa tâche en l'espèce.

[Le Président lit les paragraphes 33 à 58 de l'avis consultatif[1].]

Je prie maintenant le Greffier de bien vouloir lire le dispositif de l'avis en anglais.

[The Registrar reads paragraph 58 of the Opinion[2].]

M. Elias joint une déclaration à l'avis consultatif; MM. Oda, Schwebel et Shahabuddeen y joignent les exposés de leur opinion individuelle.

L'audience est levée.

Le Président,
(Signé) José María RUDA.

Le Greffier,
(Signé) Eduardo VALENCIA-OSPINA.

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[1] *C.I.J. Recueil 1988*, p. 26-35.
[2] *I.C.J. Reports 1988*, p. 35.

CORRESPONDANCE

CORRESPONDENCE

1. THE SECRETARY-GENERAL OF THE UNITED NATIONS TO THE PRESIDENT OF THE COURT

[See p. 3, supra.*]*

2. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN [1]

(télégramme)

3 mars 1988.

Ai l'honneur vous informer, conformément à l'article 66, paragraphe 1, du Statut de la Cour internationale de Justice, que le 2 mars 1988 l'Assemblée générale des Nations Unies a prié la Cour de donner un avis consultatif sur la question suivante:

> «Etant donné les faits consignés dans les rapports du Secrétaire général (A/42/915 et Add.1), les Etats-Unis d'Amérique, en tant que partie à l'accord entre l'Organisation des Nations Unies et les Etats-Unis d'Amérique relatif au siège de l'Organisation des Nations Unies, sont-ils tenus de recourir à l'arbitrage conformément à la section 21 de l'accord ?»

Les rapports susmentionnés du Secrétaire général relatent les négociations avec le Gouvernement des Etats-Unis concernant l'applicabilité des dispositions légales des Etats-Unis (qui devraient entrer en vigueur le 21 mars 1988) au bureau de la mission permanente d'observation de l'OLP auprès de l'ONU.

(Signé) Eduardo VALENCIA-OSPINA.

3. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

9 March 1988.

I have the honour to transmit to Your Excellency herewith a copy of an Order made by the Court today in the proceedings on the request for an advisory opinion concerning the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*. By that Order the Court first invites you to supply the documents contemplated by Article 65, paragraph 2, of the Statute of the Court at the earliest date possible.

The Court decided further that the United Nations and the United States of America are, pursuant to Article 66, paragraph 2, of the Statute, considered likely to be able to furnish information on the question. The present letter should therefore be regarded as the special and direct communication contemplated by that provision; the time-limit fixed by the Court for the submission of written statements by the United Nations, the United States of America, and any other State party to the Statute which desires to do so is 25 March 1988. The Court also

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[1] Une communication analogue a été adressée aux autres Etats admis à ester devant la Cour.

decided to hold hearings, opening on 11 April 1988, at which oral comments on written statements may be submitted to the Court by the United Nations, the United States of America, and such other States as have presented written statements, and reserved the subsequent procedure for further decision.

4. THE REGISTRAR TO THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA

9 March 1988.

I have the honour to transmit to Your Excellency herewith a copy of an Order made by the Court today in the proceedings on the request for an advisory opinion concerning the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*. By that Order the Court decided *(inter alia)* that the United Nations and the United States of America are, pursuant to Article 66, paragraph 2, of the Statute, considered likely to be able to furnish information on the question. The present letter should therefore be regarded as the special and direct communication contemplated by that provision; the time-limit fixed by the Court for the submission of written statements by the United States of America, the United Nations, and any other State party to the Statute which desires to do so is 25 March 1988. The Court also decided to hold hearings, opening on 11 April 1988, at which oral comments on written statements may be submitted to the Court by the United Nations, the United States of America, and such other States as have presented written statements, and reserved the subsequent procedure for further decision.

5. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN [1]

(télégramme)

9 mars 1988.

Suite à mon télégramme du 3 mars ai honneur vous informer que Cour a décidé aujourd'hui par ordonnance qu'Organisation Nations Unies et Etats-Unis Amérique sont susceptibles fournir renseignements (art. 66, par. 2, Statut) sur question soumise à Cour pour avis consultatif au sujet de l'applicabilité de l'obligation d'arbitrage en vertu de la section 21 de l'accord du 26 juin 1947 relatif siège ONU et qu'autres Etats parties au Statut qui le désireront pourront soumettre à Cour un exposé écrit sur la question le 25 mars 1988 au plus tard. Cour a aussi décidé tenir audiences s'ouvrant 11 avril 1988 au cours desquelles observations sur exposés écrits pourront être faites par ONU, Etats-Unis et autres Etats qui auront déposé exposés écrits. Suite procédure est réservée. Copie ordonnance sera transmise prochainement.

6. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

10 March 1988.

Further to the Secretary-General's letter of 2 March 1988 transmitting the request of the General Assembly for an advisory opinion, we dispatch to you

[1] Une communication analogue a été adressée aux autres Etats admis à ester devant la Cour.

herewith by courier service, Part I of the Dossier (30 copies in English and 5 copies in French). This Part contains all relevant United Nations documents connected with the proceedings leading to the request by the General Assembly, correspondence between the United Nations and the Permanent Mission of the United States to the United Nations and materials relating to the United States legislation (i.e., the Anti-Terrorism Act of 1987). As you will note, the United States legislation materials have not been translated into French.

Parts II and III of the Dossier will contain materials relevant to the Observer Status of the Palestine Liberation Organization and to the Headquarters Agreement. They are still under preparation and will be sent as soon as possible. Meanwhile, I am enclosing the following documents which will form part of the Dossier to be sent to you in the next instalment:

(a) The Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (*United Nations Treaty Series*, Vol. 11, pp. 11-40, in English and French).

(b) Public Law 357, 80th Congress, Chapter 482, 1st Session (Treaties and other International Acts Series 1676, pp. 25-30) in English only.

(c) Admission of representatives of non-governmental organizations enjoying consultative status. Memorandum by the Legal Department. E/2397, dated 10 April 1953, 4 pp., particularly paragraphs 9 to 13 (in English and French).

(Signed) Carl-August FLEISCHHAUER.

7. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

11 March 1988.

Please find in the attachment the text of a letter which was received from the office of the United States Attorney General by the PLO Observer Mission to the United Nations.

The Attorney General of the United States of America to the Palestine Liberation Organization Observer Mission to the United Nations

I am writing to notify you that on March 21, 1988, the provisions of the "Anti-Terrorism Act of 1987" (Title X of the Foreign Relations Authorization Act of 1988-89; Pub. L. No. 100-204, enacted by the Congress of the United States and approved Dec. 22, 1987 (the "Act")) will become effective. The Act prohibits, among other things, the Palestine Liberation Organization ("PLO") from establishing or maintaining an office within the jurisdiction of the United States. Accordingly, as of March 21, 1988, maintaining the PLO Observer Mission to the United Nations in the United States will be unlawful.

The legislation charges the Attorney General with the responsibility of enforcing the Act. To that end, please be advised that, should you fail to comply with the requirements of the Act, the Department of Justice will forthwith take action in United States federal court to ensure your compliance.

If you have any questions concerning this matter, you may contact the Department of Justice at (202) 633-2051.

(Signed) Edwin MEESE III.

8. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

11 March 1988.

Please see attached letter addressed to the Secretary General dated 11 March 1988 from the Acting Permanent Representative of the United States of America. This letter was delivered by hand by the Acting Permanent Representative to the Secretary-General this morning, Friday, 11 March 1988 at 10.15. The Secretary-General accepted receipt thereof under protest.

An announcement is scheduled to be made by the United States Attorney General at 4.30 p.m. today.

The Acting Permanent Representative of the United States in the United Nations Security Council to the Secretary-General of the United Nations

I have the honor to refer to your letters of January 14, February 11, and March 4, 1988 and to General Assembly resolutions 42/229A and 42/229B.

I wish to inform you that the Attorney General of the United States has determined that he is required by the Anti-Terrorism Act of 1987 to close the office of the Palestine Liberation Organization Observer Mission to the United Nations in New York, irrespective of any obligations the United States may have under the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations. If the PLO does not comply with the Act, the Attorney General will initiate legal action to close the PLO Observer Mission on or about March 21, 1988, the effective date of the Act. This course of action will allow the orderly enforcement of the Act. The United States will not take other actions to close the Observer Mission pending a decision in such litigation. Under the circumstances, the United States believes that submission of this matter to arbitration would not serve a useful purpose.

(Signed) Herbert S. OKUN.

9. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN [1]

14 mars 1988.

Le Greffier de la Cour internationale de Justice a l'honneur de transmettre ci-joint un exemplaire imprimé de la requête pour avis consultatif que l'Assemblée générale des Nations Unies a présentée à la Cour au sujet de l'*Applicabilité de l'obligation d'arbitrage en vertu de la section 21 de l'accord du 26 juin 1947 relatif au siège de l'Organisation des Nations Unies* et que le Secrétaire général des Nations Unies a transmise à la Cour par lettre du 2 mars 1988, ainsi qu'un exemplaire imprimé de l'ordonnance rendue en l'espèce par la Cour le 9 mars 1988.

Le Greffier a en outre l'honneur d'appeler l'attention des Etats parties au Statut de la Cour sur le paragraphe 3 du dispositif de l'ordonnance, dans lequel la Cour décide, ainsi qu'ils en ont été informés par télégramme, que ceux d'entre eux qui en auront exprimé le désir pourront soumettre à la Cour un exposé écrit sur la

[1] Une communication analogue a été adressée aux autres Etats admis à ester devant la Cour.

question, le 25 mars 1988 au plus tard. Les Etats qui se proposent de lui soumettre un tel exposé, lequel devra être rédigé dans l'une des deux langues officielles de la Cour, le français ou l'anglais, voudront bien en informer le Greffier aussitôt que possible.

10. THE REGISTRAR TO THE LEGAL COUNSEL OF THE UNITED NATIONS

14 March 1988.

I have the honour to acknowledge receipt of your letter of 10 March 1988 concerning transmission of the Secretary-General's dossier of the documents contemplated by Article 65, paragraph 2, of the Statute in the case concerning the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, and to confirm that we have now received by courier Part I of the Dossier and the three additional documents listed in your letter.

11. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

18 March 1988.

Further to my letter of 10 March 1988, I am sending you herewith Parts II and III of the Dossier (30 copies in English and 15 in French). You will note that the U.S. Congressional materials have not been translated into French.

As you are aware, the General Assembly has resumed its session today to consider the developments since the adoption of Assembly resolutions 42/229 A and B. Accordingly, Part IV of the Dossier will cover materials of that period. I trust we will be able to send them to you shortly after the meetings of the Assembly.

12. THE SECRETARY-GENERAL OF THE UNITED NATIONS TO THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

24 March 1988.

I have the honour to inform you that I have designated Mr. Carl-August Fleischhauer, Under Secretary-General, the Legal Counsel, as the representative of the Secretary-General in the proceedings of the Court concerning the request by the General Assembly for an advisory opinion concerning the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*.

Mr. Fleischhauer is authorized to present written and oral statements on behalf of the Secretary-General in the matter before the Court.

(Signed) Javier PÉREZ DE CUÉLLAR.

13. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

24 March 1988.

I have the honour to transmit herewith a letter[1] from the Secretary-General, addressed to the President of the International Court of Justice, authorizing me to present written and oral statements on his behalf in the matter of the Advisory Opinion concerning the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*.

Pursuant to the above-mentioned authorization, I have the honour to transmit herewith for communication to the Court thirty copies in English of the written statement on behalf of the Secretary-General.

Copies of this letter, of the above-mentioned letter of the Secretary-General and of the English text of the written statement, have been transmitted to you today by facsimile.

Thirty copies of French translations of the Secretary-General's written statement will be despatched under separate cover within the next few days.

14. THE REGISTRAR TO THE LEGAL COUNSEL OF THE UNITED NATIONS

25 March 1988.

In view of time constraints, and pending formal acknowledgements and transmissions, I have the honour to transmit herewith the written statements of the Syrian Arab Republic and the United States of America in the advisory proceedings on the question of the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*.

15. THE REGISTRAR TO THE MINISTER FOR FOREIGN AFFAIRS OF THE SYRIAN ARAB REPUBLIC

25 March 1988.

In view of time constraints, and pending formal acknowledgments and transmissions, I have the honour to transmit herewith the written statements of the United States of America and of the Secretary-General of the United Nations in the advisory proceedings on the question of the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*.

16. THE REGISTRAR TO THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA

25 March 1988.

In view of time constraints, and pending formal acknowledgments and transmissions, I have the honour to transmit herewith the written statements of

[1] See No. 9, *supra*.

the Syrian Arab Republic and of the Secretary-General of the United Nations in the advisory proceedings on the question of the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*.

17. THE DEPUTY TO THE UNDER-SECRETARY-GENERAL AND DIRECTOR, GENERAL LEGAL DIVISION, OFFICE OF LEGAL AFFAIRS OF THE UNITED NATIONS TO THE REGISTRAR

(telex)

28 March 1988.

Part IV of Dossier, containing 15 documents relating to the period subsequent to the request by the General Assembly for an advisory opinion, will be pouched on Monday, 28 March.

(Signed) Paul C. Szász.

18. THE DEPUTY TO THE UNDER-SECRETARY-GENERAL AND DIRECTOR, GENERAL LEGAL DIVISION, OFFICE OF LEGAL AFFAIRS OF THE UNITED NATIONS TO THE REGISTRAR

(telex)

28 March 1988.

Attached addendum to General Assembly document A/42/L.18 (Dossier No. 108) was distributed here today, 28 March, in English and French. We will number it 108a, and eventually include it in a formal corrigendum/addendum to Dossier, Part IV.

19. THE REGISTRAR TO THE LEGAL COUNSEL OF THE UNITED NATIONS

28 March 1988.

Further to my informal letter of 25 March 1988, I am now sending by facsimile herewith a formal letter of acknowledgment and transmittal of written statements under Article 105, paragraph 1, of the Rules of Court. The copies of the Syrian and United States written statements are not being included in the facsimile transmission, as you already have these, but I am including the brief statement from the German Democratic Republic, which arrived after my letter to you of 25 March 1988 had been transmitted.

20. THE REGISTRAR TO THE LEGAL COUNSEL OF THE UNITED NATIONS

28 March 1988.

I have the honour to acknowledge receipt of your letter of 24 March 1988 and the written statement of the Secretary-General of the United Nations in the case

concerning the request by the United Nations General Assembly for an advisory opinion on the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, received by facsimile on 25 March 1988.

In accordance with Article 105, paragraph 1, of the Rules of Court, I have the honour to communicate to you herewith the text of the written statements submitted to the Court, within the time-limit fixed by the Court's Order dated 9 March 1988, by the following States:

German Democratic Republic
Syrian Arab Republic
United States of America.

I should be obliged if you would inform me in due course whether the Secretary-General will wish to make oral comments on these written statements at the hearing to be held for the purpose on 11 April 1988.

21. THE REGISTRAR TO THE MINISTER FOR FOREIGN AFFAIRS OF THE GERMAN DEMOCRATIC REPUBLIC

28 March 1988.

I have the honour to acknowledge receipt of Your Excellency's telex message of 25 March 1988, constituting the written statement of the German Democratic Republic in the case concerning the request by the United Nations General Assembly for an advisory opinion on the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*.

In accordance with Article 105, paragraph 1, of the Rules of Court, I have the honour to communicate to you herewith the text of the written statements submitted to the Court, within the time-limit fixed by the Court's Order dated 9 March 1988, by the Secretary-General of the United Nations and by the following States:

Syrian Arab Republic
United States of America.

I should be obliged if Your Excellency would inform me whether the Government of the German Democratic Republic will wish to make oral comments on these written statements at the hearing to be held for the purpose on 11 April 1988.

22. THE REGISTRAR TO THE MINISTER FOR FOREIGN AFFAIRS OF THE SYRIAN ARAB REPUBLIC

28 March 1988.

I have the honour to acknowledge receipt of Your Excellency's letter of 25 March 1988 and the written statement of the Syrian Arab Republic in the case concerning the request by the United Nations General Assembly for an advisory opinion on the *Applicability of the Obligation to Arbitrate under Section 21 of the*

United Nations Headquarters Agreement of 26 June 1947, received by facsimile on 25 March 1988.

In accordance with Article 105, paragraph 1, of the Rules of Court, I have the honour to communicate to you herewith the text of the written statements submitted to the Court, within the time-limit fixed by the Court's Order dated 9 March 1988, by the Secretary-General of the United Nations and by the following States:

German Democratic Republic
United States of America.

I should be obliged if Your Excellency would inform me in due course whether the Government of the Syrian Arab Republic will wish to make oral comments on these written statements at the hearing to be held for the purpose on 11 April 1988.

23. THE REGISTRAR TO THE AMBASSADOR OF THE UNITED STATES OF AMERICA TO THE NETHERLANDS

28 March 1988.

I have the honour to acknowledge receipt of Your Excellency's letter of 25 March 1988, constituting the written statement of the United States of America in the case concerning the request by the United Nations General Assembly for an advisory opinion on the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, received on 25 March 1988.

In accordance with Article 105, paragraph 1, of the Rules of Court, I have the honour to communicate to you herewith the text of the written statements submitted to the Court, within the time-limit fixed by the Court's Order dated 9 March 1988, by the Secretary-General of the United Nations and by the following States:

German Democratic Republic
Syrian Arab Republic.

I note from Your Excellency's letter that the Government of the United States does not intend to make oral comments on these written statements at the hearing to be held for the purpose on 11 April 1988.

24. THE REGISTRAR TO THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA

28 March 1988.

Further to my facsimile communication of 25 March 1988, I have the honour to transmit to Your Excellency herewith a copy of a letter I have today addressed to the United States Ambassador in The Hague, and a copy of the communication from the Government of the German Democratic Republic referred to in that letter. The other statements there referred to were transmitted to you with my previous communication.

25. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

28 March 1988.

Further to my letter of 18 March 1988 and Mr. Szász's cable of 25 March 1988, I am herewith sending you Part IV of the Dossier (30 copies in English and 15 copies in French) containing materials relating to the proceedings subsequent to the request by the General Assembly for an advisory opinion. Please note that in the French version, the Introductory Note, table of contents and the document No. 116 are not yet available in that language; these will be sent to you by facsimile on 29 March.

Accordingly, the entire Dossier sent to you comprises 124 documents. A table showing a summary of the contents of the entire Dossier is enclosed herewith.

Should the General Assembly reconvene before 11 April 1988, as envisaged in its decision taken at the 109th plenary meeting held on 23 March 1988, we will send you, without delay, all relevant materials emanating from that resumed session.

26. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

(telex)

30 March 1988.

As previously announced I am transmitting herewith a facsimile of the French translation of the Secretary-General's Written Statement. Thirty additional copies will be dispatched by courier on 31 March 1988.

I am also sending the originals of the letters of 24 March from the Secretary-General to the President of the Court and from me to you.

I would also appreciate your making known to Members of the Court the following corrigenda to the English statement only: footnote 42 should read document 106; footnote 44 should read document 115.

27. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS[1]

31 March 1988.

I have the honour to inform your Excellency that the Court will hold a hearing on Monday, 11 April 1988, at 10 a.m. for the purpose of enabling the States and the organization which have submitted written statements on the request for advisory opinion on the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, to comment on the other statements presented (Statute, Article 66, paragraph 4).

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[1] A communication in the same terms was sent to the Secretary of State of the United States of America and to the Minister for Foreign Affairs of the German Democratic Republic and the Syrian Arab Republic.

28. THE DEPUTY TO THE UNDER-SECRETARY-GENERAL AND DIRECTOR, GENERAL LEGAL DIVISION, OFFICE OF LEGAL AFFAIRS OF THE UNITED NATIONS TO THE REGISTRAR

(telex)

31 March 1988.

Please find here by facsimile the English and French versions of document A/INF/42/8/Add.1, setting out, *inter alia*, the texts of the decisions (now numbered 42/461 and 42/462) of the General Assembly referred to respectively in document No. 15, page 64 and document No. 113, page 23 of the Dossier.

29. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

5 April 1988.

I have the honour to transmit to Your Excellency herewith a copy of the French translation, prepared by the Registry for the use of Members of the Court, of the written statements submitted to the Court in connection with the request for an advisory opinion on the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947* by the Governments of the German Democratic Republic, the Syrian Arab Republic and the United States of America. This translation has however no official character.

30. THE REGISTRAR TO THE MINISTER FOR FOREIGN AFFAIRS OF THE GERMAN DEMOCRATIC REPUBLIC [1]

5 April 1988.

I have the honour to transmit to Your Excellency herewith a copy of the French text of the written statements submitted to the Court in connection with the request for an advisory opinion on the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947* by the Secretary-General of the United Nations, Your Excellency's Government and the Governments of the Syrian Arab Republic and the United States of America. The French text of the Secretary-General's statement was prepared by the United Nations Secretariat; the translation of the other statements was made by the Registry for the use of the Members of the Court, and has no official character.

[1] A similar communication was also sent to the Minister for Foreign Affairs of the Syrian Arab Republic and to the Secretary of State of the United States of America.

31. THE MINISTER FOR FOREIGN AFFAIRS OF THE GERMAN DEMOCRATIC REPUBLIC TO THE REGISTRAR

(telex)

7 April 1988.

In reply to your letter dated 28 March 1988 I have the honour to inform you that the Government of the German Democratic Republic does not consider it necessary to make oral comments on its Written Statements of 25 March last.

(Signed) Oskar FISCHER.

32. THE REGISTRAR TO THE LEGAL COUNSEL OF THE UNITED NATIONS

(telex)

7 April 1988.

Reference Dossier of documents concerning Assembly's request (resolution 42/229B) for advisory opinion, resolution 42/210B in sixth preambular paragraph quotes statement by Secretary-General dated 22 October 1987, which statement is apparently not included in Dossier. Grateful if text could be supplied with indication of form and forum in which made.

33. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

(telex)

7 April 1988.

Re your cable requesting statement by Secretary-General dated 22 October 1987, partially quoted in Assembly resolution 42/210B. Please find herewith by facsimile text of statement in fifth paragraph. It was made in a UN daily press briefing by Mr. François Giuliani, spokesman for the Secretary-General and was published in the form contained in the attachment.

Annex

For Information of United Nations Secretariat only

22 October 1987.

UNITED NATIONS DAILY PRESS BRIEFING

"Mr. Giuliani then read out the following statement, attributable to the Spokesman, describing the Secretary-General's position on the Observer Mission of the Palestine Liberation Organization (PLO): 'The members of the PLO Observer Mission are, by virtue of resolution 3237 (XXIX), invitees to the United Nations. As such, they are covered by sections 11, 12 and 13 of the Headquarters Agreement of 26 June 1947. There is therefore a treaty obligation on the host

country to permit PLO Observer Mission personnel to enter and remain in the United States to carry out their official functions at United Nations Headquarters.'

To a series of questions on that statement, Mr. Giuliani said it had been made in light of recent moves in the United States Congress to close the PLO offices in Washington and New York. The PLO Mission had been in touch with both the Legal Office and the Secretary-General. To his knowledge, it was the first time that an Observer Mission to the United Nations was being asked to close its offices in a host country, he said in answer to a question. The United States State Department was expected to make a statement on that issue today. Asked what exactly the United Nations could and would do, Mr. Giuliani said he would have to check, he mentioned that the issue had also been taken up in the Committee on Relations with the Host Country ..."

34. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DES PAYS-BAS

7 avril 1988.

Me référant au paragraphe V des principes généraux de l'accord du 26 juin 1946 entre le Gouvernement des Pays-Bas et la Cour internationale de Justice, j'ai l'honneur de porter à votre connaissance que, à l'audience qui se tiendra le 11 avril 1988 en l'affaire de l'*Applicabilité de l'obligation d'arbitrage en vertu de la section 21 de l'accord du 26 juin 1947 relatif au siège de l'Organisation des Nations Unies* (requête pour avis consultatif), l'Organisation des Nations Unies sera représentée comme suit:

M. Carl-August Fleischhauer, secrétaire général adjoint, conseiller juridique;
M. Ralph Zacklin, juriste principal;
M^me^ Marcia Constable, assistante administrative.

35. THE REGISTRAR TO THE LEGAL COUNSEL OF THE UNITED NATIONS

8 April 1988.

Article 71 of the Rules of Court provides, in paragraph 1, that a verbatim record shall be made by the Registrar of every hearing, in the official language of the Court which has been used, and (paragraph 4) that copies of the transcript thereof shall be circulated to the parties. The rule further provides that the parties "may, under the supervision of the Court, correct the transcripts of the speeches and statements made on their behalf, but in no case may corrections affect the sense and bearing thereof". In advisory proceedings, the transcript is similarly made available to the representatives of States or organizations making oral statements before the Court.

The transcript of the sitting on Monday 11 April 1988 to hear oral statements or comments in respect of the request for advisory opinion on the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947* will be made available on the same day.

In order to facilitate any supervision which the Court may feel it proper to exercise, any correction or revision which you may wish to make to the transcript

should be handed to the Registrar's Secretary as early as possible on the day following the sitting; in any event, corrections should be handed in not later than 6 p.m. on that day.

36. THE REGISTRAR TO THE SECRETARY-GENERAL AND TO THE LEGAL COUNSEL OF THE UNITED NATIONS [1]

(telex)

21 April 1988.

I have the honour to inform your Excellency that the advisory opinion requested of the International Court of Justice on a question concerning the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947* will be delivered at a public sitting in the Peace Palace, The Hague, at 16 hours on Tuesday, 26 April 1988.

37. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

26 April 1988.

I have the honour to transmit to you herewith the official signed and sealed copy, provided for in Article 109 of the Rules of Court, of the Advisory Opinion given today by the Court, at the request of the General Assembly, on *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*.

I also enclose ten additional copies of the text for your use; the printed version of the Opinion will be available shortly.

38. THE REGISTRAR TO THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA [2]

26 April 1988.

I have the honour to transmit to Your Excellency herewith a copy of the Advisory Opinion given by the Court today, at the request of the United Nations General Assembly, on the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*.

I also take this opportunity to transmit, for Your Excellency's information, a copy of the verbatim records of the two public hearings held in this case, on 11 and 12 April 1988, and of the translation thereof prepared by the Registry for the use of Members of the Court.

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[1] A communication in the same terms was also sent to the Ministers for Foreign Affairs of the German Democratic Republic and the Syrian Arab Republic and to the Secretary of State of the United States of America.

[2] A communication in the same terms was also sent to the Ministers for Foreign Affairs of the German Democratic Republic and the Syrian Arab Republic.

39. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN [1]

30 mai 1988.

Conformément à l'article 109 du Règlement de la Cour, le Greffier de la Cour internationale de Justice a l'honneur de transmettre sous ce pli un exemplaire de l'avis consultatif rendu par la Cour le 26 avril 1988 au sujet de l'*Applicabilité de l'obligation d'arbitrage en vertu de la section 21 de l'accord du 26 juin 1947 relatif au siège de l'Organisation des Nations Unies*.

D'autres exemplaires seront expédiés ultérieurement par la voie ordinaire.

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[1] Une communication analogue a été adressée aux autres Etats admis à ester devant la Cour.

On peut acquérir les publications de la COUR INTERNATIONALE DE JUSTICE auprés des librairies spécialisées du monde entier. Pour tous renseignements, prière de s'adresser à la *Section de la distribution et des ventes, Office des Nations Unies, 1211 Genève 10 (Suisse)* ou à la *Section des ventes, Nations Unies, New York, NY 10017 (Etats-Unis)*.

On peut acquérir les publications de la COUR PERMANENTE DE JUSTICE INTERNATIONALE (1920-1946) auprés de Kraus Reprint Co., Kraus-Thomson Organization Limited, Route 100, Millwood, NY 10546 (Etats-Unis). Pour tous renseignements, prière de s'adresser à cette société.

The publications of the INTERNATIONAL COURT OF JUSTICE may be ordered from any bookseller. For information regarding the sale of the Court's publications please write to the *Distribution and Sales Section, Office of the United Nations, 1211 Geneva 10 (Switzerland)*, or the *Sales Section, United Nations, New York, NY 10017 (USA)*.

The publications of the PERMANENT COURT OF INTERNATIONAL JUSTICE (1920-1946) are obtainable from Kraus Reprint Co., Kraus-Thomson Organization Limited, Route 100, Millwood, NY 10546 (USA), to which all requests should be addressed.

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